

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ASHTON HAKERT
Claimant

JOES PIZZA
Employer

APPEAL 22A-UI-03335-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/19/21
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On January 18, 2022, Joe's Pizza (employer) filed an appeal from the January 10, 2022, reference 02, unemployment insurance decision that found the protest untimely and allowed Ashton Hakert (claimant) to receive benefits. After due notice was issued, a telephone hearing was held on March 3, 2022. The claimant did not call in to participate. The employer participated through Bookkeeper Nancy Dlouhy. The administrative law judge took official notice of the administrative record, including the notice of claim and protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant separated from employment on in August 2020 and filed a claim for benefits effective December 19, 2021.

The notice of claim was mailed to employer's address of record on December 21, 2021, and was received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of January 3, 2022. Ms. Dlouhy faxed it to Iowa Workforce Development at 3:00 p.m. on January 3, 2022.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

Iowa Code section 96.6(2) provides, in pertinent part:

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). Another portion of section 96.6(2) dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code section 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The employer received the notice of claim within the protest period. The employer submitted their protest by fax on January 3, 2022. IWD did not mark it as received until January 4, 2022. When the Department allows employers to submit a protest by fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. Based on the evidence the employer's protest is timely.

DECISION:

The January 10, 2022, (reference 02) unemployment insurance decision is REVERSED. The employer filed a timely protest.

REMAND: The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.



Carly Smith
Administrative Law Judge

March 23, 2022
Decision Dated and Mailed

cs/scn