

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

CATHY J MCCORMACK
Claimant

APPEAL NO. 08A-UI-04650-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**"KEOKUK CHAMBER OF COMM
"EPPERS HOTEL**
Employer

**OC: 04/13/08 R: 12
Claimant: Respondent (1)**

871 IAC 23.43(9)a – Combined Wage Claim
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated May 9, 2008, reference 01, which held the protest concerning Cathy McCormack's separation on May 31, 2007 was not timely filed. After due notice was issued, a hearing was held by telephone on May 29, 2008. The claimant participated personally. The employer participated by Katie O'Brien, Executive Director.

ISSUE:

The issue in this matter is whether the employer filed a timely protest as required by law and whether the employer is liable for charges for benefits paid on out-of-state combined wage claim.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: Ms. McCormack last worked for this employer on May 31, 2007. Subsequently the claimant filed a combined wage claim and wage credits were transferred from the State of Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20. The Notice of Claim on Ms. McCormack's claim for benefits was mailed to the employer's address of record on April 16, 2008 and was received by the employer within ten days. The Notice of Claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not affect a protest until May 7, 2008 which is after the ten-day period had expired. The delay in completing the protest took place because Ms. O'Brien had been out of town due to her father's heart surgery. Ms. O'Brien did not make arrangements to have official correspondence handled or forwarded in her absence.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 23.43(9) provides in part:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20, will be liable for charges for benefits paid by the out-of-state paying state, but no reimbursement so payable shall be charged against a contributory employer's account for the purpose of section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and that such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim....

A portion of the administrative code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing the issue of timeliness of an appeal under that portion of the code section, the Iowa Supreme Court held that the statute prescribing the time for notice of appeal clearly limits the time to do so and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979).

The reasoning and holding of that court is considered to be controlling on this portion of the same Iowa Code section which deals with the time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Ms. O'Brien had the ability to designate another employee to complete official correspondence or forward the correspondence to her in her absence but did not do so. Therefore, the administrative law judge is without jurisdiction to entertain any protests regarding the separation from employment.

The administrative law judge concludes the employer failed to affect a timely protest within the time period prescribed by the Iowa Employment Security Law and the delay was not due to any agency error or misinformation or delay or other action of the United States Postal Service. As the employer has failed to affect a timely protest, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment.

DECISION:

The decision of the representative dated May 9, 2008, reference 01, is affirmed. The employer failed to file a timely protest and the payment of claims is governed by the interstate reciprocal benefit plan as provided in Iowa Code section 96.20. The decision of the representative shall stand and remain in full force and effect. Benefits are allowed, providing Ms. McCormack satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs