

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRINDA SIMON
Claimant

APPEAL NO: 06A-UI-08001-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLEASANT PARK ESTATES INC
Employer

OC: 09/25/05 R: 01
Claimant: Respondent (5)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 31, 2006, reference 02, that concluded the claimant was eligible for business closing benefits. A telephone hearing was held on August 24, 2006. Proper notice of the hearing was given to the parties. The claimant failed to participate in the hearing. Clarice Wright participated on behalf of the employer.

ISSUE:

Did the employer file a timely protest of the claim?

FINDINGS OF FACT:

A notice of claim was mailed to the employer's address of record on September 30, 2005, and was received at that address within ten days. The business was owned at that time by Clarice Wright, but she had someone else operating the business at that time. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of October 11, 2005. Wright protested the claim on August 9, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits.

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning applies to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code section 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Wright argues that she was given a chance to participate in a fact-finding interview. The fact that Wright has someone operating her facility who did not protest the claim or notify her so she could protest it does not excuse the late filing of her protest. It is up to the employer to set up procedures for handling unemployment insurance claims so that situations such as this do not occur. The person who was operating the facility must be considered Wright's agent. If he was at fault in failing to protest the claimant, that fault is attributed to the principal in this case, the employer.

DECISION:

The unemployment insurance decision dated July 31, 2006, reference 02, is modified with no change in the outcome. The employer failed to file a timely protest, and the unemployment insurance decision concluding the claimant is qualified for benefits but not for business closing remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs