

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ANGELA KOONTZ

Claimant

APPEAL NO: 08A-UI-01769-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

E I TELEMARKETING CO

Employer

**OC: 07/01/07 R: 04
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

E. I. Telemarketing Company (employer) appealed a representative's February 15, 2008 decision (reference 03) that concluded Angela Koontz (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 6, 2008. Neither party participated in the hearing. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer file a timely protest or establish a legal excuse for filing late protest?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of July 1, 2007. She reopened her claim the week of November 4. On July 9, 2007, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until July 19, 2007, to respond to the notice.

The employer completed the notice of claim form and faxed it to the Department on July 11, 2007. The employer only informed the Department that the claimant received holiday pay of eight hours for July 4 on a July 13, 2007 paycheck. The employer did not indicate the claimant quit on July 5, 2007.

On February 12, 2008, the employer protested charges to its account.

REASONING AND CONCLUSIONS OF LAW:

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 section 96.6-2. Another portion of Iowa Code

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. IDJS, 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 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts indicate the employer received the notice of claim prior to July 19, 2007. The employer completed the form and faxed the completed form to the Department on July 19, 2007. Although the employer asserted in February 2008 that the claimant quit on July 5, the employer did not report this on the completed July 11 form. The employer reported the claimant received wages during the fourth quarter of 2007. The record does not establish any legal excuse for failing to timely protest the claimant's receipt of benefits by informing the Department on July 11 that the claimant had quit on July 5, 2007. 871 IAC 24.35(2).

Under the facts of this case the employer filed a timely protest, but did not protest the claimant's receipt of benefits when she quit on July 5, 2007. Therefore, the Appeals Section has no legal jurisdiction to relieve the employer's account from charge.

DECISION:

The representative's February 15, 2008 decision (reference 03) is affirmed. The employer filed a timely protest on July 11, 2007, but failed to inform the Department that the claimant quit on July 5, 2007. The employer's subsequently mailed February 12, 2008 protest in connection with a July 5 separation does not establish a legal excuse for failing to correctly inform the Department on July 11 that the claimant quit on July 5, 2007. The Appeals Section does not have legal jurisdiction to address the merits of the employer's appeal. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs