

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DEANA M TORRES
Claimant

GRINNELL CENTER LLC
Employer

APPEAL 18A-UI-06097-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/15/18
Claimant: Respondent (4)**

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.5 – Requalification

STATEMENT OF THE CASE:

Grinnell Center, LLC (employer) filed an appeal from the May 22, 2018, reference 03, unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on June 19, 2018. Deana M. Torres (claimant) participated. The employer participated through CFO Darla Michael. The Claimant's Exhibit A was not admitted into the record on the basis of relevance. The Department's Exhibit D1 was received.

ISSUES:

Is the employer's protest timely?

Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant filed her claim for benefits effective April 15, 2018 and her weekly benefit amount is \$224.00. The claimant separated from the employer on or about September 5, 2017. Between October 1, 2017 and March 31, 2018, the claimant earned more than \$2,240.00 in insured wages from two subsequent employers.

A notice of claim was mailed to employer's address of record on April 18, 2018, and was received by employer within ten days. The notice of claim contains a warning that the employer's protest must be postmarked, faxed or returned not later than ten days from the initial mailing date and gave a response deadline of April 30, 2018. On April 29, 2018, CFO Darla Michael completed the employer's protest and delivered it to the Hudson, Iowa post office. The employer's protest was not postmarked until May 1, 2018, when it was processed through the Waterloo, Iowa post office.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer filed a timely protest to the claimant's claim for benefits and the claimant requalified for benefits since her separation from the employer. Benefits are allowed, provided the claimant is otherwise eligible, and the employer's account shall not be subject to charge.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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 § 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 delivered the protest to the post office in a timely manner. Any delay between the delivery date and the date the protest was postmarked is due to the United States postal service. Therefore, the employer's protest will be accepted as timely.

A claimant will have requalified for benefits if she earns ten times her weekly benefit amount in insured wages following a separation from an employer, regardless of the reason for separation, and, once an employee has requalified, the employer is not liable for benefits claimed following that separation. Iowa Code §§ 96.5(1)g and 96.5(2)a. The claimant has earned more than ten times her weekly benefit amount following her separation from this employer on or about September 5, 2017. The claimant has requalified for benefits. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The May 22, 2018, reference 03, unemployment insurance decision is modified in favor of the employer. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn