

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY L CURRY
Claimant

BASEMENT SOLUTIONS INC
Employer

APPEAL 18A-UI-07895-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/17/17
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Basement Solutions, Inc. (employer) filed an appeal from the July 17, 2018, reference 01, 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 August 13, 2018. Anthony L. Curry (claimant) did not respond to the hearing notice and did not participate. The employer participated through Manager Dan Mark. The Employer's Exhibit 1 was admitted into the record.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective December 17, 2017 and reactivated his claim for benefits on May 6, 2018, following his separation on April 16, 2018. Notices of claim were sent to the employer on December 26, 2017, March 20, 2018, and May 14, 2018. The employer did not receive any of the three notices as the zip code to which they were mailed only had four digits instead of five.

On or about June 13, 2018, the employer learned that the claimant was receiving unemployment insurance benefits through an acquaintance. On or about June 16, the employer contacted the local Iowa Workforce Development (IWD) office and was advised to contact customer service in Des Moines, Iowa, which it did. On July 3, the May 14, 2018 notice of claim was again mailed to the employer with the correct zip code. On July 11, 2018, the employer responded to the notice of claim protesting the claimant's receipt of benefits. Whether the claimant's separation qualifies him for unemployment insurance benefits has not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely protest to the claimant's receipt of unemployment insurance benefits.

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

Filing – determination – appeal.

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 Iowa Code § 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 did not have an opportunity to protest the notice of claim because the notice of claim was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within ten days of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

DECISION:

The July 17, 2018, reference 01, unemployment insurance decision is reversed. The employer has 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn