

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

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WATERLOO IA 50703

TYSON FRESH MEATS INC
c/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283

Appeal Number: 04A-UI-09457-DWT
OC: 08/08/04 R: 03
Claimant: Respondent (4/R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal are based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's August 26, 2004 decision (reference 03) that concluded 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 September 28, 2004. The claimant appeared for the hearing and Guadalupe McCarney was present to translate. The employer's witness was called, but was not initially available for the hearing. The claimant agreed that if the employer responded to the message left on the witness's answering machine, he did would not participate in the hearing because his eligibility to receive benefits was not at issue.

After the claimant and the interpreter were excused from the hearing, the employer's witness contacted the Appeals Section. Janet Dees, a Claims Service Representative, appeared on the employer's behalf. The employer was allowed to send in documents after the hearing to show

the date the employer faxed the employer's protest to the Department. This document has been identified as Employer's Exhibit One and is admitted as evidence. Based on the evidence, the arguments of the employer, 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 a late protest?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of August 8, 2004. On August 12, 2004, the Department mailed a notice to the employer's unemployment insurance representative, TALX. The notice indicated 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 August 23, 2004 to respond to the notice.

TALX received the notice of claim on August 16, 2004. The employer's representative waited until August 23, 2004 to generate a protest. Dees did not fax the completed protest, but another representative faxed the employer's protest to the Department on August 23, 2004. Employer's Exhibit One indicates TALX also mailed a hardcopy of the completed protest to the Department on August 23, 2004. The Department indicated it received the employer's protest on August 25, 2004.

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned at least ten times his weekly benefit amount from subsequent employment.

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 §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. 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 §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 on August 16, 2004. Even though the employer's representative waited a week before sending a protest, the employer faxed and mailed a protest to the Department on August 23, 2004. Employer's Exhibit One does not establish or verify that the employer's representative faxed the protest on August 23, 2004 as the employer asserted. However, without any Departmental representative to dispute the employer, a preponderance of the evidence establishes the employer filed a timely protest. Unfortunately, the employer does not print out a report verifying when faxes are sent or received.

Under the facts of this case the employer filed a timely protest. Therefore, the Department has legal jurisdiction to consider whether the employer's account can be relieved from charge. See

Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). The issue of whether the employer's account is subject to charge must be remanded to the Claims Section to decide.

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned at least ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's August 26, 2004 decision (reference 03) is modified in the employer's favor. The employer filed a timely protest. Since the claimant requalified before he established his claim for unemployment insurance benefits, he remains qualified to receive unemployment insurance benefits. The issue of whether the employer's account will be charged is remanded to the Claims Section to investigate and decide.

dlw/pjs