

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DEIRDRE O BREWSTER
Claimant

APPEAL NO. 11A-UI-08304-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRAD DEERY MOTORS
Employer

**OC: 01/16/11
Claimant: Respondent (2/R)**

Section 96.6-2 – Timeliness of Protest
Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Brad Deery Motors (employer) appealed a representative's May 18, 2011 decision (reference 02) that allowed unemployment insurance benefits to Deirdre Brewster (claimant) because it found the protest untimely. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 9, 2011. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Joel Kilburg, Office Manager. Exhibit D-1 was admitted in evidence.

ISSUE:

The issue is whether the protest was filed in a timely manner and, if so, whether the appeal was filed in a timely manner.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on January 24, 2011, and never received by the employer. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer received a Statement of Charges on May 11, 2011. It filed a protest on May 11, 2011, which is after the ten-day period for appealing the Notice of Claim had expired. The protest indicates a problem with mail service by the United States Postal Service.

A disqualification decision was mailed to employer's last-known address of record on May 18, 2011. The employer did not receive the decision until received by e-mail on June 22, 2011. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by the first working day following May 28, 2011. The appeal was not filed until June 22, 2011, which is after the date noticed on the disqualification decision. The appeal again mentions a problem the employer is having receiving mail.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the employer's protest is timely. The administrative law judge determines it is.

Iowa Code § 96.6-2 provides:

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 representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The employer did not have an opportunity to file a protest because the notice of claim was not received. Without notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer's protest of the Statement of Charges shall be considered timely. Therefore, the protest shall be accepted as timely.

The next issue to be considered in this appeal is whether the employer's appeal is timely. The administrative law judge determines it is.

Again, the employer filed an appeal to the decision as soon as it learned of its existence. Therefore the appeal shall be accepted as timely.

The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The May 18, 2011, reference 02, decision is reversed. Employer has filed a timely protest and a timely appeal. The issue of the claimant's separation from employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/pjs