

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

TROY T GAES
239 – 580TH ST
ALTA IA 51002

LCCC INC
D/B/A LAKE CREEK COUNTRY CLUB
1 CLUBHOUSE DR
STORM LAKE IA 50588

Appeal Number: 05A-UI-01038-DWT
OC: 01/09/05 R: 01
Claimant: Respondent (1)

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 is 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:

Lake Creek Country Club (employer) appealed a representative's January 27, 2004 (reference 01) that concluded Troy T. Gaes (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 February 15, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Melea Raveling, the director/manager, appeared on the employer's behalf. 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 January 9, 2005. On January 14, 2005, 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 January 24, 2004, to respond to the notice.

The employer received the notice of claim in a timely manner. The employer's business was closed for the season in January. Raveling goes to the office once a week to do the necessary paperwork. She planned to complete the notice of claim and fax the employer's protest on January 24. Raveling did not go to the office on January 24, 2005 because her son was ill. On January 25, 2005, Raveling went to the office and faxed the completed form.

The employer is a seasonal business. The employer is not open for business from November to March or April.

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 in a timely manner and had a reasonable opportunity to file the protest on or before January 24, 2005. While the employer established a personal reason for filing the protest late, the employer did not establish a legal excuse for filing the protest one day late. 871 IAC 24.35(2). Under the facts of this case the employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, the Appeals Section has no legal jurisdiction to relieve the employer's account 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).

DECISION:

The representative's January 27, 2005 decision (reference 01) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, the employer's account may be charged for benefits paid to the claimant.

dlw/tjc