

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
PATRICIA N RASCO Claimant SIOUX LAND AGING SERVICES INC Employer	APPEAL NO. 07A-UI-11188-DWT ADMINISTRATIVE LAW JUDGE DECISION OC: 11/11/07 R: 01 Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Sioux Land Aging Services, Inc. (employer) appealed a representative's December 3, 2007 decision (reference 02) that concluded Patricia N. Rasco (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 December 28, 2007. The claimant participated in the hearing. Sandy Pickens, the community care coordinator, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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 November 11, 2007. On November 14, 2007, 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 November 26, 2007, to respond to the notice.

The employer received the Notice of Claim on November 16, 2007. After the employer receives unemployment insurance paperwork, this paperwork is forwarded the person who supervised the former employee to complete. Pickens did not receive the Notice of Claim until November 27, 2007. On that day, she completed the form protesting any charges to the employer's account and faxed it to the Department that same day.

The claimant worked for the employer between May 13, 2002 and July 12, 2007. The claimant informed the employer she was resigning because she had accepted another job. Between July 13 and November 11, 2007 the claimant worked for another employer and earned more than ten times her weekly benefit amount.

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 before November 26, or before the initial ten-day deadline. Even though Pickens may not have personally received the Notice of Claim form until November 27, the employer received the Notice of Claim on November 16. Problems in forwarding the Notice of Claim to Pickens in a timely manner occurred within the employer's office. This does not establish a legal excuse for filing a protest late on November 27, 2007. 871 IAC 24.35(2).

Since the employer did not file a timely protest or establish a legal excuse for filing a late protest, there is no legal jurisdiction to relieve the employer's account from charge.

Since the claimant worked for another employer prior to establishing her claim for benefits where she earned ten times her weekly benefit amount from subsequent employment, there is no legal consequence to the claimant regardless of the result of this decision.

DECISION:

The representative's December 3, 2007 decision (reference 02) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Since the claimant requalified before she established her claim for unemployment insurance benefits, she remains qualified to receive unemployment insurance benefits. The employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css