

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRIANNA M RECKER
Claimant

DALL-HAUS INC
Employer

APPEAL 17A-UI-09079-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/30/17
Claimant: Respondent (2-R)

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 21, 2017 (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on September 22, 2017. The claimant, Brianna M. Recker, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Dall-Haus, Inc., participated by Katie Sturtz. The administrative law judge took official notice of the fact-finding documentation.

ISSUES:

Was the employer's protest timely?
Is the employer liable for benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was provided to the employer in the SIDES system. The employer did not receive an email alert notifying it of the notice of claim. The employer first learned of claimant's claim for benefits when it received its Statement of Charges for the second quarter of 2017. The employer commenced an investigation and learned that it missed this claimant's notice of claim that would have been received through SIDES. The employer contacted Iowa Workforce Development and received notice for the first time that claimant filed for unemployment insurance benefits. The employer filed its protest on August 17, 2017, the same day it learned of claimant's pending claim.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether employer's protest is timely. The administrative law judge concludes it is.

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

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 section 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 section 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 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 immediately upon receipt of the information from Iowa Workforce Development. Therefore, the protest shall be accepted as timely.

DECISION:

The August 21, 2017 (reference 02) unemployment insurance decision is reversed. The employer 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.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn