

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALISHA SELIN
Claimant

DEE ZEE INC
Employer

APPEAL 22A-UI-04502-JD-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 06/27/21
Claimant: Respondent (4)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the February 2, 2022, (reference 03) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on April 7, 2022. The claimant did not participate. The employer Dee Zee participated through Molly Reilly, Human Resources Assistant. The administrative law judge took official notice of the administrative record.

ISSUES:

Is the employer's protest timely?

Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on July 2, 2021, and was received by employer within ten days, on July 12, 2021. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of July 12, 2021. The form advises any protest must be postmarked, faxed, or returned not later than ten days from July 2, 2021. The employer did not file a protest response until July 14, 2021, which is after the ten-day period had expired. The employer attempted to file its notice of claim by the deadline but had difficulty with the SIDES system and its submission was delayed. The claimant quit for other employment and has requalified for benefits since the separation from the employer. If the employer experiences similar difficulty in the future, the protest may always be submitted by mail as long as it is postmarked by the due date.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security Law.

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

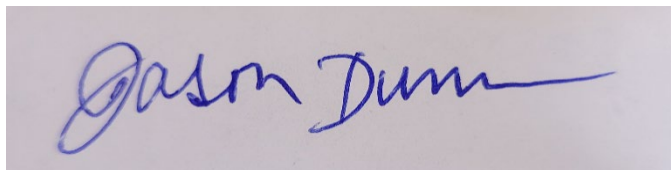
2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of 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 § 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 received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2).

The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The February 2, 2022, (reference 03) unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.



Jason Dunn
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April 13, 2022
Decision Dated and Mailed

jd/scn