

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CECILIA DOMINGUEZ DIAZ**  
Claimant

**SEDONA STAFFING INC**  
Employer

**APPEAL 19A-UI-04387-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/16/18  
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the May 23, 2019, (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on June 24, 2019. The claimant, Cecilia Dominguez Diaz, did not register a telephone number at which to be reached and did not participate in the hearing. The employer, Sedona Staffing, Inc., participated through Colleen McGuinty, Unemployment Benefits Administrator. Employer's Exhibits 1, 2, and 3 were received and admitted into the record without objection. The administrative law judge took official notice of the administrative record, including the notice of claim and the statement of protest.

**ISSUES:**

Was the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on December 19, 2018, and was received by employer within ten days. 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 December 31, 2018. The employer filed its protest on December 27, 2018. The employer did not realize the agency did not receive this protest until it received its Statement of Charges for the first quarter of 2019. The employer supplied a print-out from its fax machine showing the protest was faxed to the agency on December 27, 2018. This print-out also indicates the fax was successful.

**REASONING AND CONCLUSIONS OF LAW:**

The sole 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.

In this case, the employer filed a protest in a timely manner on December 27, 2018, but the agency did not receive the fax transmission. Immediately upon receipt of information to that effect, the protest was re-filed. Therefore, the protest shall be accepted as timely.

**DECISION:**

The May 23, 2019, (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