

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**TOM A BRIGHTON**

Claimant

**APPEAL NO: 15A-UI-08023-LDT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**O'REILLY AUTOMOTIVE INC**

Employer

**OC: 06/07/15**

**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

O'Reilly Automotive, Inc. (employer) appealed a representative's July 6, 2015 decision (reference 01) that concluded Tom A. Brighton (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 13, 2015. The claimant opted not to participate in the hearing because he had no personal knowledge regarding the timeliness of the employer's protest. Susan Yount appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. 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 affirming the representative's decision and allowing the claimant benefits.

**ISSUE:**

Should the employer's protest be treated as timely?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective June 7, 2015. The employer has opted to participate in the multistate SIDES program, and so a notification of the claimant's claim was transmitted to the employer on June 15, 2015. The employer received the notice. The notice contained a warning that a protest response must be received by the Agency by June 25, 2015. The protest response was not filed until it was transmitted on June 30, 2015, which is after the due date. The protest was transmitted when it was because while Yount received the notice on June 15, she did not attend to the notice before she was off on vacation for the week of June 22, and she believed that there was someone else with the employer who would cover her duties while she was off work. However, when she returned to

work after the vacation she found that the notification regarding the claimant was still pending, so she submitted it on June 30.

### **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 issuance of 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 is issued. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa 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 administrative law judge considers the reasoning and holding of the *Beardslee* court 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 transmitted to the employer. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did have a reasonable opportunity to file a timely protest.

Rule 871 IAC 24.35(2) provides in pertinent part:

The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

The employer has not shown that the delay for not complying with the jurisdictional time limit was due to error, misinformation, delay or other action of the Agency or the United States Postal Service. Since the employer filed the protest late without any legal excuse, the employer did not file a timely protest. Since the administrative law judge concludes that the protest was not timely filed pursuant to Iowa Code § 96.6-2, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the protest and the reasons for the claimant's separation from employment, regardless of the merits of the employer's protest. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979); *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 July 6, 2015 (reference 01) decision is affirmed. The protest in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided the claimant is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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