

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARIA S SANTIAGO**  
Claimant

**APPEAL NO: 10A-UI-08536-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES**  
Employer

**OC: 05/23/10**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed a representative's June 11, 2010 decision (reference 02) that held the employer's account subject to charge because the employer did not file a timely protest. A telephone hearing was held on August 2, 2010. The claimant responded to the hearing notice, but was not available for the hearing. Deborah Perdue, the Mount Pleasant branch manager, appeared on the employer's behalf. 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.

**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 benefits during the week of May 23, 2010. On May 28, 2010, 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 was mailed to the employer's Burlington address, the employer's address of record. The notice of claim indicated the employer had until June 7, 2010 to respond to the notice.

The employer's Burlington office did not fax the notice of claim to the Mount Pleasant office until after 5:00 p.m. on June 9. When Perdue saw the notice of claim on June 10, she completed the form and faxed it the Department that same day. It is not known when the Burlington office received the notice of claim.

The claimant worked for the employer until August 9, 2009. She had been working for one of the employer's clients who hired her to work as a full-time employee. Between August 9, 2009, and May 23, 2010, the claimant worked and earned wages that equal 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 do not indicate when the employer's Burlington office received the notice of claim. The Burlington office did not fax the notice of claim to the Mount Pleasant office until the evening of June 9, 2010, or after the initial ten-day deadline.

The employer did not file timely protest because the protest was due on June 7, not June 10. Since the Burlington office is the address of record for the employer, the employer did not establish a legal excuse for filing its protest late on June 10, 2010. 871 IAC 24.35(2). Under the facts presented in this case, the Appeals Section does not have legal jurisdiction to relieve the employer's account from charge. Therefore, the employer's account is subject to charge.

Since the claimant earned more than ten times her weekly benefit amount after she worked for the employer, her eligibility to receive benefits is not at issue.

**DECISION:**

The representative's June 11, 2010 decision (reference 02) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Therefore, the employer's account is subject to charge. The claimant's eligibility to receive benefits is not at issue.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/css