

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES R MAESTAS
Claimant

APPEAL NO: 08A-UI-05193-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LEWIS CENTRAL COMMUNITY SCH DIST
Employer

**OC: 05/04/08 R: 01
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 27, 2008, reference 04, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on June 16, 2008. Proper notice of the hearing was given to the parties. The claimant failed to participate in the hearing. Arthur participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Did the employer file a timely protest of the claim?

FINDINGS OF FACT:

A notice of claim was mailed to the employer's address of record on May 8, 2008, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of May 19, 2008. The employer's protest was faxed on May 21, 2008, which was after the time period for protesting had expired.

The reason the protest was not submitted earlier was because the employer's business manager, Arthur Hill, who normally handles unemployment insurance matters, was out of the office during the week that the notice was received. Hill returned to the office on May 19, but did not discover the notice of claim in his mail until May 21.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code section 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979). The failure to file a timely protest was due to the employer's failure to have a process in place to timely handle unemployment matters in the business manager's absence and the business manager's failure to discover the notice of claim immediately after returning back to work.

The employer should be aware that the claimant was disqualified based on his separation from his most recent employer and has not received any benefits thus far.

DECISION:

The unemployment insurance decision dated May 27, 2008, reference 04, is affirmed. The employer failed to file a timely protest, and the unemployment insurance decision concluding the claimant was not disqualified for benefits based on his separation from the employer remains in effect. The claimant remains disqualified based on his separation from his most recent employer.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs