

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES E SCHICK
Claimant

TOTAL DETAILING AUTO SPA LLC
Employer

APPEAL 18A-UI-11360-DB-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/21/18
Claimant: Respondent (2R)

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

The employer/appellant filed a timely appeal from the November 16, 2018 (reference 01) unemployment insurance decision which found that the employer's protest cannot be accepted because it was not timely. The parties were properly notified of the hearing. A telephone hearing was held on December 11, 2018. The claimant, James E. Schick, did not participate personally but Elaine Schick participated on behalf of the claimant. The employer, Total Detailing Auto Spa LLC, participated through witness Tim Lofgren. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

A notice of claim was mailed to the employer on October 24, 2018 to an address of record at 3211 E 35th Street CT, Davenport Iowa 52807. No one at this address received the notice of claim. This was an address for a silent partner of the business. Mr. Lofgren had his staff contact Iowa Workforce Development ("IWD") several years prior to 2018 to change the address of record to the current Utica Ridge Road address.

The employer learned that a notice of claim had been filed when the claimant personally spoke to Mr. Lofgren about it and thanked him for not protesting it. On November 8, 2018, the employer faxed a letter to Iowa Workforce Development ("IWD") regarding claimant's separation from employment in order to protest the claim for benefits.

There has been no initial investigation and determination regarding whether the claimant's separation from employment was disqualifying. The question of whether the claimant's separation from this employer was disqualifying will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination, with notice and opportunity to be heard provided to both parties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's protest shall be considered timely.

Iowa Code § 96.6(2) provides:

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 representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

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. 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 did not have an opportunity to protest the notice of claim prior to the due date listed on the notice because the notice was not received by the employer. Further, it was mailed to an incorrect address, which had been changed by the employer several years prior. Without timely notice of the claim, no meaningful opportunity to protest exists. The employer filed a protest as soon as possible after it learned the notice of claim existed. Therefore, the protest shall be accepted as timely.

DECISION:

The November 16, 2018 (reference 01) unemployment insurance decision is reversed. The employer's protest shall be considered timely.

REMAND: The separation issue as delineated in the findings of fact is remanded to the Benefits Bureau of Iowa Workforce Development for an initial fact-finding interview and unemployment insurance decision, with notice and opportunity to be heard provided to both parties.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs