

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TABETHA R MEYERS
Claimant

APPEAL NO: 14A-UI-08280-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MENARD INC
Employer

OC: 06/22/14
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 7, 2014 determination (reference 04) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant did not participate at the September 2 hearing. Lindsey Sandifer appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the employer did not file a timely protest or establish a legal excuse for filing a late protest.

ISSUE:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

FINDINGS OF FACT:

The claimant's last day of work for the employer was February 27, 2013. When she worked, she was not married. The claimant established a claim for benefits during the week of June 22, 2014. A notice of claim was mailed to the employer on July 1, 2014. The notice informed the employer a completed protest was due on or before July 11, 2014. The notice also informed the employer that the maximum amount that could be charged to the employer's account was \$470.

The employer received the notice of claim on July 8, 2014. The employer did not know the claimant by her married name. The employer did a search of the last four numbers of the claimant's social security number and could not identify the claimant as a former employee. Sandifer sent a completed protest to the Department on July 9 indicating the claimant had not worked for the employer.

After the Department receiving the employer's protest, the Department sent the employer the claimant's maiden name on July 25. The Department gave the employer until July 30 to protest charges to its account.

Sandifer was out of state from July 31 through August 3. Sandifer's office did not receive the new information until July 31. When Sandifer is out of the office, the employer has not designated anyone else to complete protests for unemployment insurance purposes. After

Sandifer returned to work on August 4, she completed the form and faxed the Department the updated information on August 5.

After the claimant worked for the employer, but before she established her unemployment insurance claim the week of June 22, 2014, she worked for another employer. She earned more than \$1550 in wages after she worked for the employer.

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 indicate the employer received the initial notice of claim within the ten-day deadline. The employer timely completed the initial notice of claim, but based on information the Department provided on the notice, the employer could not find a record of the claimant's employment and reported that she had not worked for the employer.

On July 25, the Department provided the employer with additional information, the claimant's maiden name. While it is important for the Department to make timely decisions concerning a claimant's eligibility to receive benefits, in this case the employer is not her most recent employer and this employment separation does not decide the claimant's eligibility to receive benefits.

The facts establish that after the Department provided the employer with additional information, the claimant's maiden name, the employer faxed a completed protest within 11 days of July 25. While Sandifer was probably busy catching up on mail when she returned to work on August 4, the employer made the decision that she is the only person responsible for completing notice of claims. While it is unfortunate that no else could have completed the notice of claim, the employer made this business decision. The employer did not establish a legal excuse for filing a late protest. The employer's 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 an protest. The Appeals Bureau does not have jurisdiction to relieve the employer's account from charge.

DECISION:

The representative's August 7, 2014 determination (reference 04) is affirmed. Even though the employer timely responded to the initial notice of claim on July 9, the employer did not timely protest after receiving additional information. The employer did not establish a legal excuse for filing additional information one day late. The claimant remains qualified to receive benefits and the employer's account is subject to charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css