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

MEGUILLE S SNEAD
Claimant

APPEAL NO: 12A-UI-03086-ST

ADMINISTRATIVE LAW JUDGE
DECISION

LABOR READY MIDWEST INC
Employer

OC: 11/27/11
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed a department decision dated March 14, 2012, reference 01, that held it failed to file a timely protest regarding claimant's employment separation on November 5, 2011, and benefits are allowed. A telephone hearing was held on April 11, 2012. The claimant did not participate. Amara Meyer, Representative, and Kathy Archer, participated for the employer. Employer Exhibits 1, 2 & 3 were received as evidence.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant filed a combined wage unemployment claim effective November 27, 2011. The department mailed a notice of claim to the employer to its address of record on December 9, 2011. The claim advises the employer it has until December 19 to file a protest. The employer received a separate notification of claimant's unemployment claim from the state of Illinois (IDES). The employer representative timely faxed a protest on December 21 to IDES, but it did not submit a similar protest to the state of Iowa.

On February 27, 2012, the employer representative made an inquiry of Iowa why its client was being charged for claimant benefits, and it postmarked this protest on the same date. The department record shows the employer tax account lists only its address and not its employer representative (TALX).

Claimant failed to respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that 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 that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer failed to file a timely protest within the ten-day period required by law.

The department correctly mailed the notice of claim to the employer address of record. It should be noted that IDES followed the same procedure. Apparently, the employer apprised its representative of the Illinois claim issue but not about Iowa, because TALX timely protested the Illinois claim though it had not received direct notice of it.

DECISION:

The department decision dated March 14, 2012, reference 01, is affirmed. The employer failed to file a timely protest, and the department decision on claimant's November 5, 2011 employment separation remains in force and effect.

_____
Randy L. Stephenson
Administrative Law Judge

_____
Decision Dated and Mailed

rls/pjs