

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CORY W MCFARLAND**  
Claimant

**APPEAL NO: 15A-UI-02391-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FLYING MANGO INC**  
Employer

**OC: 02/01/15**  
**Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timely Protest

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's February 20, 2015 (reference 01) determination that held the employer's account subject to charge because the employer did not file a timely protest. The claimant responded to the hearing notice, but was not available for the scheduled March 26, 2015 hearing. Suzanne Van Englehovern-Wedeking and Mike Wedeking, the owners, appeared on the employer's behalf.

After the hearing was closed and the employer had been excused, the claimant responded to the message the administrative law judge left at 10:30 a.m. The claimant returned the call around 11:50 a.m. or more than an hour after the hearing had been scheduled. The claimant made a request to reopen the hearing.

Based on the evidence, the claimant's request to reopen the hearing, the arguments of the parties, and the law, the administrative law judge denies the claimant's request to reopen the hearing and cannot relieve the employer's account from charge.

**ISSUES:**

Did the claimant establish good cause to reopen the hearing?

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 February 15, 2015. A notice of claim was mailed to the employer on February 3, 2015. The notice of claim informed the employer the maximum amount that could be charged to its account during the claimant's benefit year and that a protest had to be filed with the Department on or before February 13, 2015.

The owners returned to Iowa in late January after spending eight weeks in Florida with a terminally ill sibling. When the owners returned to Iowa, they had to play catch up with bills and paperwork that had accumulated when they were out-of-state. It was not until February 16, that the employer was able to complete this protest and then mailed it on February 18, 2015.

The claimant worked for the employer until January 25, 2014. He left for another job. After the claimant left on January 25, 2014, but before he established his claim for benefits during the week of February 1, 2015, he earned more than \$3040 in wages from subsequent employment. The claimant's maximum weekly benefit amount is \$304.

The claimant received the hearing notice about a month before the March 26 scheduled hearing. He put a reminder on his cell phone that the hearing was scheduled at 10 30 a.m. on March 26. About a week before the hearing, the claimant's employer implemented a new phone policy and prohibited cell phones at the job site. The claimant then kept his cell phone in his car. On March 26, 2014, the claimant forgot about the scheduled hearing. He responded to the message left at 10 30 a.m. when he returned the administrative law judge's call at 11:50 a.m.

### **REASONING AND CONCLUSIONS OF LAW:**

If a party responds to a hearing notice after the record has been closed and the party who participated at the hearing is no longer on the line, the administrative law judge can only ask why the party responded late to the hearing notice. If the party establishes good cause for responding late, the hearing shall be reopened. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. 871 IAC 26.14(7)b, c. Even though the claimant planned to participate at the hearing, he forgot about the March 26 hearing. The claimant did not establish good cause to reopen the hearing. The claimant's request to reopen the hearing is denied.

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 was in Iowa when the notice of claim was mailed on February 3, 2015. The employer received the notice of claim before February 13, or before the initial ten-day deadline.

In late January 2015, the employer returned from Florida after spending an emotional eight weeks in Florida. While I understand the employer's position and am sympathetic to the employer's situation, the employer did not establish a legal excuse for filing its protest late on February 18, 2015. Under the facts of this case the employer did not file a timely protest or establish a legal excuse for filing a late protest. The Appeals Bureau does not have any legal jurisdiction to relieve the employer's account from charge.

The claimant remains eligible to receive benefits. Since the claimant earned more than ten times his weekly benefit amount after January 25, 2014, but before February 1, 2015. Even if his January 25, 2014 employment separation was for disqualifying reasons, he would be eligible to receive benefits based on the wages he earned after working for the employer.

**DECISION:**

The claimant's request to reopen the hearing is denied. The representative's February 20, 2015 (reference 01) determination is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. The Appeals Bureau does not have any legal jurisdiction to relieve the employer's account from charge. Regardless of the reason for the claimant's January 25, 2014 employment separation, he earned requalifying wages before he established his claim for benefits during the week of February 1, 2015. Therefore, the claimant is eligible to receive benefits, provided he meets all other eligibility requirements.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/can