

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FABIAN E CARTAGENA
Claimant

APPEAL NO: 12A-UI-14638-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROTHAMEL TURF FARMS INC
Employer

OC: 12/18/11
Claimant: Respondent (2/R)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(2)a – Employer Liability

STATEMENT OF THE CASE:

The employer appealed a representative's December 11, 2012 determination (reference 01) that held the claimant eligible to receive benefits as of August 19, 2012, and the employer's account subject to charge because the employer had not filed a timely protest. The claimant did not respond to the hearing notice or participate in the hearing. Craig Rothamel appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the employer filed a timely protest and its account will not be charged.

ISSUE:

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

FINDINGS OF FACT:

The claimant started working for the employer the spring of 2012. The employer's employees are seasonal, early April to November or December. During his employment, the claimant worked full time driving a truck along with other miscellaneous duties. The employer discharged the claimant on August 16, 2012, for taking copper from a customer's property and selling it without the customer's or employer's permission.

The claimant established a claim for benefits during the week of December 18, 2011. He reopened his claim the week of August 19, 2012. A notice of claim was mailed to the employer on August 29, 2012. The notice of claim informed the employer a protest had to be filed no later than September 10, 2012.

The employer faxed the completed protest on September 5, 2012. The employer assumed the fax was successfully transmitted. The employer's fax does not provide a report about whether a fax is or is not successfully transmitted. The employer is not a base period employer on the claimant's December 18, 2011 claim.

When the employer had not received any information about a fact-finding interview, the employer called and checked the status of this claim. In early December 2012, the employer learned the Department did not have a record of receiving the September 5 protest. On December 6, 2012, the employer faxed the original protest to the Department again.

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 determination states an appeal must be filed within ten days after notification of that determination 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 faxed a protest on September 5, 2012. Even though the Department asserted it did not receive the September 5 protest, the employer timely filed its protest. Therefore, the Appeals Section has legal jurisdiction to relieve the employer's account from charge.

For the claim year December 18, 2011 through December 15, 2012, the employer is not a base period employer and its account will not be charged.

The record indicates that after the claimant worked for the employer, but before he established a new claim for benefits the week of December 16, 2012, he worked and earned more than \$8000.00 from another employer. This means when the claimant established a new benefit year, he had earned requalifying wages and is not disqualified from receiving benefits based on the reasons for his employment separation with this employer. This also means the employer's account will not be charged for any benefits the claimant may receive since December 16, 2012.

This matter will be remanded to the Claims Section to determine if the reason for the claimant's August 16, 2012 employment separation is for disqualifying or nondisqualifying reasons.

DECISION:

The representative's December 11, 2012 determination (reference 01) is reversed. The employer filed a timely protest. The employer's account is not subject to charge for either of claimant's benefit years. This matter is **Remanded** to the Claims Section to determine if the reason for the claimant's August 16, 2012 employment separation was for disqualifying or nondisqualifying reasons.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/tll