

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREW J RICHARDSON**  
Claimant

**APPEAL NO: 13A-UI-03030-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TPI IOWA LLC**  
Employer

**OC: 02/01/13**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

TPI Iowa, L.L.C. (employer) appealed a representative's March 11, 2013 decision (reference 04) that concluded Andrew J. Richardson (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 11, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Danielle Williams appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision affirming the representative's decision and allowing the claimant benefits.

**ISSUE:**

Should the employer's protest be treated as timely?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective February 17, 2013. A notice of claim was mailed to the employer's last-known address of record on February 20, 2013. The employer received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by March 4, 2013. The protest was not filed until it was faxed on March 7, 2013, which is after the date noticed on the notice of claim.

The reason for the delay was that the notice of claim became misdirected within the employer's offices. It arrived after February 22 during a period that the employer's receptionist, who normally processed the mail, was on vacation. The backup person who was processing the mail incorrectly gave the notice to an employee who was in the payroll department, instead of the human resources department. That person in the payroll department did not recognize that

the notice, along with some other Agency mail, was not for her and was time sensitive, and so she put the mail into a drawer rather than redelivering the mail to human resources. That payroll employee was then out sick for a period of time. The payroll employee's supervisor went through the payroll employee's desk on March 7 and found the mail. The mail was then turned over to human resources, and the protest was completed and faxed to the Agency that day, asserting that there had been a disqualifying separation from employment on October 30, 2011.

Agency records indicate that the claimant has had two more recent separations from employment with other employer which have been found to be disqualifying, one on September 20, 2012, and the other on February 19, 2013. The claimant has not as yet requalified to receive unemployment insurance benefits after those separations.

### **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 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 administrative law judge considers the reasoning and holding of the *Beardslee* court 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. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did have a reasonable opportunity to file a timely protest.

871 IAC 24.35(2) provides in pertinent part:

The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

While there were unfortunate internal issues which led to the delay in filing the protest, these are essentially the result of business decisions attributable to the employer, and for which the employer must bear the consequences. The employer has not shown that the delay for not complying with the jurisdictional time limit was due to department error or misinformation or delay or other action of the United States Postal Service. Since the employer filed the protest late without any legal excuse, the employer did not file a timely protest. Since the administrative law judge concludes that the protest was not timely filed pursuant to Iowa Code § 96.6-2, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of

the protest and the reasons for the claimant's separation from employment, regardless of the merits of the employer's protest. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990). Regardless, the issue is currently moot as the claimant is presently not eligible to receive unemployment insurance benefits due to his more recent disqualifying separations from other employers.

**DECISION:**

The March 11, 2013 (reference 04) decision is affirmed. The protest in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided the claimant is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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