

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MARK R LAWLER Claimant	68-0157 (9-06) - 3091078 - EI
S & R ROOFING INC Employer	APPEAL NO. 08A-UI-00413-DWT ADMINISTRATIVE LAW JUDGE DECISION
	OC: 12/09/07 R: 01 Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

S & R Roofing, Inc. (employer) appealed a representative's January 8, 2008 decision (reference 02) that concluded Mark R. Lawler (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 28, 2008. The claimant participated in the hearing. Steve Scharfenkamp, the president, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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 December 9, 2007. On December 12, 2007, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until December 24, 2007, to respond to the notice.

The employer received the notice prior to December 24. The employer did not open the notice of claim up until December 26, 2007. The employer assumed the notice of claim was something that did not need the employer's immediate attention. After the employer read the notice of claim on December 26, the employer completed the form and mailed it that day to the Department.

The claimant worked for the employer until late August or early September 2007. The claimant resigned because he accepted a job that paid him more money and gave him more hours of work. The claimant began his new job on September 14, 2007. Between September 14 and December 9, 2007, the claimant earned more than ten times his weekly benefit amount or more than \$1,400.00 from the new 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 receives the notice of claim prior to December 24 or the initial ten-day deadline. The employer did not establish a legal excuse for filing its protest on December 26, 2007. 871 IAC 24.35(2). Therefore, the Appeals Section has no legal jurisdiction to relieve the employer's account from charge. Since the employer did not file a timely protest, the employer's account cannot be relieved from charge.

DECISION:

The representative's January 8, 2008 decision (reference 02) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. Since the claimant requalified before he established his claim for unemployment insurance benefits, he remains qualified to receive unemployment insurance benefits regardless of the outcome of this decision. The employer's account cannot be relieved from charge.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css