

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ASHLEY E SMITH**  
Claimant

**APPEAL NO. 12A-UI-01681-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GOOD SMARITAN SOCIETY INC**  
Employer

**OC: 01/01/12**  
**Claimant: Respondent (4)**

Iowa Code Chapter 95 – Requalification  
Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the February 7, 2012 (reference 01) decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. After due notice was issued, a hearing was scheduled to be held by telephone conference call on March 7, 2012. Both parties responded to the hearing notice instructions but no hearing was held, as there was sufficient evidence in the administrative record, appeal letter, and accompanying documents to resolve the matter without testimony.

**ISSUE:**

The issue is whether employer's protest is timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on January 23, 2012 and was received within the protest period. The employer filed its protest on January 26, 2012 after making multiple attempts and receiving a busy signal. The claimant has requalified for benefits since the separation from the 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) that 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 received the notice of claim before the protest deadline. The employer established a legal excuse for filing its protest on after that deadline. 871 IAC 24.35(2). When the Department allows employers to fax in a protest, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. Based on the evidence, the Appeals Section has legal jurisdiction to relieve the employer's account from charge.

The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

**DECISION:**

The February 7, 2012 (reference 01) decision is modified in favor of the appellant. The employer has filed a timely protest, and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/kjw