

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PHILLIP J TOVAR
Claimant

APPEAL NO: 12A-UI-00881-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OMEGA CABINETS LTD
Employer

**OC: 12/18/11
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 18, 2012, reference 03, that concluded its protest could not be accepted because it was not filed timely. A telephone hearing was scheduled for February 16, 2012. Proper notice of the hearing was given to the parties. The claimant failed to participate in the hearing. The employer agreed that a decision in this case could be made based on the record made in 12A-UI-00843-SWT and 12A-UI-00846-SWT and the department's record regarding this claim.

ISSUE:

Did the employer file a timely protest of the claim?

FINDINGS OF FACT:

A notice of claim was mailed to the employer's address of record on December 27, 2011, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of January 6, 2012. The employer's protest was faxed on January 12, 2012, which was after the time period for protesting had expired. The reason the employer delayed sending the protest was because the human resources office was closed due to a holiday shutdown at the plant from December 23, 2011, to January 2, 2012. The office opened again on January 3, 2012, but because of the volume of unemployment notices of claim the employer had received due to the shutdown, the staff did not get to the notices of former employees that they wished to protest until later. The employer has not put in place any procedures for handling time-critical mail from Iowa Workforce Development during the holiday shutdown period.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code section 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. The failure to file a timely protest was due the employer's internal mail handling process.

Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The unemployment insurance decision dated January 18, 2012, reference 03, is affirmed. The employer failed to file a timely protest, and the unemployment insurance decision concluding the claimant is qualified for benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw