

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLE KENNER
Claimant

APPEAL NO. 13A-UI-01233-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANKENY AUTO SPA INC
Employer

OC: 12/30/12
Claimant: Respondent (1)

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the representative's decision dated January 30, 2013, reference 03, which held that the employer failed to file a timely protest. After due notice was issued, a hearing was held by telephone conference call on March 4, 2013. The claimant responded to the hearing notice but he was not available when called by the administrative law judge. A detailed message was left on how to participate in the hearing. The claimant did not call during the hearing. The employer participated by Carolyn Eyerly, Owner. The record consists of the testimony of Carolyn Eyerly. Official notice is taken of agency records.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge makes the following findings of fact:

The claimant established an original claim for unemployment insurance benefits with an original claim date of December 30, 2012. A notice of claim was mailed to the employer on January 4, 2013. The due date for any protest was January 14, 2013. The employer's protest was postmarked on January 22, 2013.

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 section 96.6-2. Another portion of Iowa Code section 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 section 96.6-2 that 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.

The employer failed to file a timely protest. There only limited circumstances under which a late filed protest can be deemed timely. One is agency error and the other is error of the United States Postal Service. Neither is present in this case. Although the administrative law judge can understand why the protest was late, the law does not permit a late filing under these particular facts.

DECISION:

The unemployment insurance decision dated January 30, 2013, reference 03, is affirmed. The employer failed to file a timely protest.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/css