

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT SCHEUERMANN**  
Claimant

**APPEAL NO: 13A-UI-11235-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**GANSONS INC**  
Employer

**OC: 08/11/13**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated September 30, 2013, reference 01, that concluded its protest could not be accepted because it was not filed timely. A telephone hearing was held on October 30, 2013. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Chris Thompson participated on behalf of the employer with a witness, Connie Buchanan.

**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 September 11, 2013, 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 September 23, 2013. The employer's protest was faxed on September 25, 2013, which was after the time period for protesting had expired. The protest was delayed because the owner of the employer was opening another business.

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. The claimant worked in Illinois.

**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. On the 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. 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).

The employer's account is not presently chargeable for benefits paid to the claimant since it is not a base period employer on the claim. If the employer becomes a base period employer in a future benefit year, charges will be determined by the state of Illinois.

**DECISION:**

The unemployment insurance decision dated September 30, 2013, reference 01, is affirmed. The decision that the employer's protest was untimely remains in effect.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/pjs