

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHANICE PERRY
Claimant

TMONE LLC
Employer

APPEAL NO. 14A-UI-10696-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/14/14
Claimant: Respondent (2-R)

Iowa Code § 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

TMOne, LLC (employer) appealed an unemployment insurance decision dated October 7, 2014, (reference 04), which held it failed to file a timely protest regarding the claimant's separation of employment on August 22, 2014, and no disqualification of unemployment insurance benefits was imposed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 4, 2014. The claimant participated in the hearing. The employer participated through Lindsey Sinn.

ISSUE:

The issue is whether the employer's protest was timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on September 18, 2014. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The address used for the employer was not complete as it listed the employer's suite number of 28 as opposed to the actual suite of 288. The employer received the notice of claim on October 3, 2014, and filed its protest on October 6, 2014, which is after the ten-day period had expired.

The issues regarding the claimant's separation from employment have not yet been investigated or adjudicated at the claims level.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer submitted a timely protest. An employer has ten days from the date a notice of claim is mailed to its last-known address to protest the payment of benefits to the claimant. See Iowa Code § 96.6-2.

In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that 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 that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

The employer did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within three days of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

Since the separation issues have not yet been adjudicated, the case will be remanded for an initial investigation and determination.

DECISION:

The employer's protest is timely. The unemployment insurance decision dated October 7, 2014, (reference 04), is reversed. The case is remanded for an initial investigation and determination.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs