

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GAYLEN R WUNSCH
Claimant

SFI INC
Employer

APPEAL 17A-UI-10037-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/03/17
Claimant: Respondent (4)

Iowa Code Chapter 96 – Requalification
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 25, 2017, (reference 01) unemployment insurance decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on October 17, 2017. Claimant did not participate. Employer participated through Seth Smith. Claimant's Exhibit A was received. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record, including claimant's wage history.

ISSUES:

Is the employer's protest timely?
Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The notice of claim was mailed to the employer's address of record on September 11, 2017, and was received within the protest period. The employer filed its protest via fax on September 21, 2017, the deadline by which to file. When employer came to work the next day, it found an error message from its fax machine stating the fax was not successfully sent due to the recipient's line being busy. The employer immediately resubmitted the protest. The claimant has requalified for benefits since the separation from the employer. If the employer experiences similar difficulty in the future, the protest may always be submitted by mail as long as it is postmarked by the due date.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

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.

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. Iowa Dep't of Job Serv.*, 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 employer received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). When the Department allows employers to submit a protest by fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. Based on the evidence, the administrative law judge has jurisdiction to determine whether the employer's account can be relieved from charges. 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 September 25, 2017, (reference 01) unemployment insurance 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.

Christine A. Louis
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Decision Dated and Mailed

cal/scn