

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DEBRA R SABIN
Claimant

IOWA VALLEY COMM COLLEGE DISTRICT
Employer

APPEAL 16A-UI-12463-JP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 08/14/16
Claimant: Respondent (2-R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the November 14, 2016, (reference 02) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 7, 2016. Claimant participated. The employer participated by human resources generalist Kristine Wyatt. Employer exhibit one was admitted into evidence with no objection. The administrative law judge took official notice of the administrative record of the fact-finding documents.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on August 16, 2016, and was received by employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. Ms. Wyatt filled out the employer's protest and faxed it to Iowa Workforce Development (IWD) on August 24, 2016 (Ms. Wyatt testified she incorrectly dated the protest as August 25, 2016). Employer Exhibit One. Ms. Wyatt normally faxes the protest to the first fax number listed on the back of the Notice of Claim, but the first two numbers were busy so she faxed it to 515-242-0497. Ms. Wyatt received a "TRANSMISSION VERIFICATION REPORT" showing the fax was sent successfully on August 24, 2016. Employer Exhibit One. The employer did not realize there was an issue with their protest until it received the quarterly wage statement and claimant's name was on it. The employer then contacted IWD to find out why the employer had not received a decision regarding claimant's claim status. The IWD employee told Ms. Wyatt that IWD had not received the employer's protest. Ms. Wyatt then resent the employer's protest to IWD and it was marked received on November 8, 2016.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the employer's protest is considered timely filed.

Iowa Code § 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 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 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 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.

The employer filed a protest in a timely manner on August 24, 2016, but the agency did not receive the fax transmission. Employer Exhibit One. The employer reasonably relied on the "TRANSMISSION VERIFICATION REPORT" showing the fax was sent successfully and when the employer became aware that IWD did not receive its protest, the employer contacted IWD and re-filed its protest. Therefore, the protest shall be accepted as timely.

DECISION:

The November 14, 2016, (reference 02) decision is reversed. The employer filed a timely protest.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs