

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOUHAMED LO
Claimant

APPEAL NO. 07A-UI-06420-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CFA INC
Employer

OC: 05/20/07 R: 03
Claimant: Respondent (4/R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

CFA, Inc. (employer) appealed a representative's June 14, 2007 decision (reference 02) that concluded Mouhamed Lo (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 2, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Karla Alvarez, the branch manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant worked for the employer in September 2006 and not again until January 23 and 24, 2007. The claimant went to the employer's office on January 25 for a job, but the employer did not have any work for the claimant. The claimant did not return to the employer's office until February 2, 2007, when he picked up his paycheck. The claimant has not worked for the employer anytime after January 24, 2007.

The claimant has worked for other employer(s) since January 24, 2007. The claimant has earned more than \$3,340.00 in wages from other employment between January 25 and May 20, 2007.

The claimant established a claim for unemployment insurance benefits during the week of May 20, 2007. On May 24, 2007, a Notice of Claim was mailed to the employer. The notice was mailed to the employer at 1902 Broadway Street, Iowa City. The employer was in the process of moving to a new location when the notice was mailed. Although the employer left a

forwarding address, the employer did not receive the Notice of Claim until June 13, 2007. On June 13, 2007, the employer faxed a completed protest to the Department.

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 § 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. IDJS, 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 which deals with the time limit to file a protest after the Notice of Claim has been mailed to the employer. The facts indicate the employer did not receive the Notice of Claim until June 13, 2007, or after the initial ten-day deadline. The employer established a legal excuse for filing its protest late on June 13, 2007. 871 IAC 24.35(2). Under the facts of this case, there is legal jurisdiction to relieve the employer's account from charge. See Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

The issue of whether the employer's account is subject to charge is remanded to the Claims Section to decide.

DECISION:

The representative's June 14, 2007 decision (reference 02) is modified in the employer's favor. The employer established a legal excuse for filing a late protest. Therefore, there is legal jurisdiction to address whether the employer's account is subject to charge. Since the claimant earned ten times his weekly benefit amount between January 25 and May 20, 2007, the claimant is not disqualified from receiving benefits based on his employment separation with the employer. The issue of whether the employer's account is subject to charge is remanded to the Claims Section to decide.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css