

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TEILA I ROBERTS
Claimant

APPEAL 17A-UI-07649-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOLDEN AGE PROPERTIES LLC
Employer

**OC: 03/12/17
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Golden Age Properties, LLC (employer) filed an appeal from the July 26, 2017, reference 03, unemployment insurance decision that found its protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone on August 16, 2017. Teila I. Roberts (claimant) did not respond to the hearing notice and did not participate. The employer participated by Administrator Laurie Buckhahn.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On February 2, 2017, the claimant was separated from her position as a Certified Nursing Assistant. The claimant filed her claim for benefits effective March 12, 2017. On March 16, 2017, Iowa Workforce Development (IWD) sent a Notice of Claim to the employer through the SIDES system. The employer did not receive the Notice of Claim.

On May 9, 2017, a Statement of Charges for the first quarter of 2017 was mailed to the employer. The Statement of Charges states that an employer has thirty days to file an appeal. The employer reviewed the Statement of Charges and realized it had not received any of the Notice of Claims for the individuals for which it was being charged.

On May 22, 2017 Administrator Laurie Buckhahn sent an email to the Chargeback Unit IWD disputing the charges. The employer discovered at that time there had been a technical issue with its SIDES account and it had not received any notices sent after October 30, 2016. On July 26, 2017, IWD issued the decision that the employer's protest on May 22, 2017 was not timely as it was not filed within ten days of March 16, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely protest to the claimant's receipt of benefits.

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.

Iowa Code section 96.7(2)a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

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 did not have an opportunity to protest the Notice of Claim because the notice was not received. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within 30 days of receipt of the Statement of Charges, which was the first time it had learned the claimant was allowed to receive benefits. Therefore, the protest shall be accepted as timely.

DECISION:

The July 26, 2017, reference 03, unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs