IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

CALLIE R HARRIS
Claimant

APPEAL NO: 13A-UI-08526-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTHERN IOWA UROLOGICAL
Employer

OC: 06/16/13
Claimant: Respondent (1)

Iowa Code § 96.6(2) –Timely Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer timely appealed a representative's July 12, 2013 determination (reference 03) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant responded to the hearing notice, but was not available when she was called for the hearing. Marilyn Schmitz and Dr. Paul Richardson appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the employer did not file a timely protest and its account remains subject to charge.

ISSUE:

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

FINDINGS OF FACT:

The employer discharged the claimant on February 27, 2012. Between February 27, 2012, and June 16, 2013, the claimant worked for another employer and earned more than $3,290.00 in wages.

The claimant established a claim for benefits during the week of June 16, 2013. Her maximum weekly benefit amount is $329.00. On June 20, 2013, a notice of claim was mailed to the employer's address of record. The notice of claim informed the employer a protest was due on or before July 1, 2013.

The employer does not know when the employer received the notice of claim. Schmitz opens the mail and then three doctors review the notice of claim to decide if a protest should be sent. On July 8, Schmitz received the notice of claim again after the doctors had reviewed it. She noticed the deadline date of July 1. On July 10, 2013, the employer successfully faxed the 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 does not know the date the employer received the notice of claim. The facts also establish that the employer filed a late protest on July 10, 2013. The employer did not establish a legal excuse for filing its protest on July 10, instead of July 1, 2013. 871 IAC 24.35(2). Since the time to protest is short, the employer may want to review its office procedure where four people have to review the notice of claim before it is completed. There is no legal jurisdiction to relieve the employer's account from charge.

Since the claimant earned requalifying wages from another employer after February 27, 2013, she would be eligible to receive benefits even if the employer had filed a timely protest.

DECISION:

The representative's July 12, 2013 determination (reference 03) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. The employer's account is subject to charge. The claimant remains eligible to receive benefits.

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Debra L. Wise
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs