

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEVEN D STONEHOUSE
Claimant

APPEAL NO. 12A-UI-01295-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROFESSIONAL TRANSPORTATION INC
Employer

**OC: 12/25/11
Claimant: Respondent (2R)**

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

The employer filed an appeal from a decision of a representative dated January 27, 2012, reference 02, which held that the employer failed to file a timely protest. After due notice, a telephone conference hearing was scheduled for and held on February 28, 2012. Claimant participated. The employer failed to respond to the hearing notice and did not participate. The record consists of the notice of claim and the written statement of the employer. Given the nature of the issue, no testimony was taken from the claimant. A detailed explanation of the issue and evidence was given to the claimant.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, makes the following findings of fact:

The claimant established an original claim for benefits on December 25, 2011. The employer was sent a notice of claim on December 29, 2011. The due date for any protest was January 9, 2012. The employer did not receive the notice of claim until January 10, 2012. A protest was postmarked January 11, 2012.

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 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 administrative law judge considers the reasoning and holding of the Beardslee court 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. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

871 IAC 24.35(2) provides in pertinent part:

The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

In this case the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion because the employer did not receive the notice of claim until after the due date for any protest. This was likely due to either agency error or error of the postal service. Under these circumstances, the protest will be deemed timely. This matter is remanded to the claims section for a determination of the separation issues.

DECISION:

The decision of the representative dated January 27, 2011, reference 02, is reversed. The employer is deemed to have filed a timely protest. This matter is remanded to the claims section for a determination of the separation issues.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs