

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KENOSHA WIMS
Claimant

STEENA CO LLC
Employer

APPEAL 16A-UI-04961-JP-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 03/13/16
Claimant: Respondent (2-R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the April 26, 2016, (reference 03) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on May 12, 2016. The claimant participated. The employer participated by owner Cara Vanseenis. Employer Exhibits One, Two, Three, and Five were admitted into the record with no objection.

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 e-mailed to employer prior to April 8, 2016. Employer Exhibit One. The employer filed an electronic response on April 8, 2016. Employer Exhibit One. The employer marked "claimant did NOT work for this employer[.]" Employer Exhibit One. The employer's response was due by April 11, 2016. Employer Exhibit One was the first document the employer received regarding claimant's claim for benefits. The employer then received Employer Exhibit Three on April 15, 2016, which was dated April 12, 2016, but due no later than April 11, 2016. Employer Exhibit Three provided information regarding the claimant and the wages earned. Employer Exhibit Three. On April 17, 2016, the employer responded by submitting Employer Exhibits One, Two, Three, and Five. The next document the employer received was a notice that its protest was not timely.

The employer did not receive a notice of claim by mail. The employer received Employer Exhibit Three in the mail and the notice that its protest was not timely in the mail.

REASONING AND CONCLUSIONS OF LAW:

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 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 administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law because it did initially reply to the notice of claim indicating the claimant had not been an employee. Employer Exhibit One. Later, the employer received more information regarding the claimant and the quarters claimant had worked. Employer Exhibit Three. This information was dated April 12, 2016, but was due on April 11, 2016. Employer Exhibit Three. Claimant received the information on April 15, 2016. When accurate information became available to the employer, it forwarded this information to the agency approximately two days after receipt. This is sufficient evidence of intent to protest any potential charges to their account. The issue of claimant's separation is remanded to Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The April 26, 2016, (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 a fact-finding interview and unemployment insurance decision.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/pjs