

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NED R MARTI
Claimant

APPEAL NO. 09A-UI-00401-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HARDI NORTH AMERICA INC
Employer

**OC: 12/21/08 R: 04
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Hardi North America, Inc. (employer) appealed a representative's January 9, 2009 decision (reference 04) that concluded Ned R. Marti (claimant) was qualified to receive benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2009. 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. Rodney Weiss, the human resource administrator, 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 claimant established a claim for benefits during the week of December 21, 2008. On December 24, 2008, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until January 5, 2009 to respond to the notice.

The employer's facility was shut down December 25 through January 5, 2009. During this time, one employee went to the employer's facility, one or two times, and picked up the employer's mail. This employee indicated the employer received the notice of claim on December 30, 2008.

Weiss was off work December 23 until January 5, 2009. On January 5, Weiss had to submit payroll and did not get through all the mail that accumulated since December 23, 2008. The employer faxed the completed protest on January 6, 2009. The employer protested because the claimant quit his employment on December 5, 2007.

Between December 5, 2007 and December 21, 2008, the claimant worked for other employers and earned more than ten times his weekly benefit amount.

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 received the notice of claim on December 30, 2008, or before the initial ten-day deadline to file the protest. Even though the employer's plant was closed December 25 until January 5, the fact the employer had accumulated mail to sort through in addition to getting payroll completed does not constitute a legal excuse for filing its protest one day late on January 6, 2009. 871 IAC 24.35(2). The employer had the notice of claim on January 5 and could have faxed it that day. Under the facts of this case the employer did not file a timely protest or establish a legal excuse for filing late appeal. Therefore, there is no legal jurisdiction to relieve the employer's account from charge. The maximum amount that can be charged to the employer's account is \$229.17.

Since 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.

DECISION:

The representative's January 9, 2009 decision (reference 04) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. As a result, the Appeals Section has no legal jurisdiction to relieve the employer's account from charge. The claimant requalified before he established his claim for unemployment insurance benefits and remains qualified to receive unemployment insurance benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css