

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DILLION M SCOTT**  
Claimant

**APPEAL NO: 14A-UI-00045-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DES MOINES BOLT SUPPLY INC**  
Employer

**OC: 12/08/13**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

Des Moines Bolt Supply, Inc. (employer) appealed a representative's December 31, 2013 decision (reference 02) that concluded Dillion M. Scott (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on January 27, 2014. The claimant participated in the hearing. Stacey Lyman 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 affirming the representative's decision and allowing the claimant benefits.

**ISSUE:**

Should the employer's protest be treated as timely?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective December 8, 2013. A notice of claim was mailed to the employer's last-known address of record on December 11, 2013. The employer received the notice on December 19; it got to the employer's human resources manager, Lyman, at about 2:00 p.m. The notice contained a warning that a protest must be postmarked or received by the Agency by December 23, 2013. The protest was not filed until it was faxed on December 26, 2013, which is after the date noticed on the notice of claim.

After receiving the notice of claim on the afternoon of December 19 Lyman completed the form and put it into the employer's fax machine to go to the Agency's Claims Section at about 2:30 p.m. That day was her last day in the office before the holidays. She left the business at about 4:00 p.m., but she did not check to see if the fax went through before she left. In fact, the

fax had not gone through. Someone else came and retrieved the fax from the machine along with the error message and placed in into Lyman's mailbox after she had left. She then found it upon her return to work on December 26 and the faxed it to the Agency.

### **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 which 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). The record shows that the employer did have a reasonable opportunity to file a timely protest.

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.

The statutory method for filing the protest is by mail so that the protest can be postmarked. The option for faxing the protest is simply a convenience allowed to the employer with the understanding that if using that method, the protest must be received by the due date. 871 IAC 24.35(1)b. The employer did not have fax the protest on December 19 and be unsure as to whether or not it had gone through; the employer could have mailed the protest on December 19 and have been sure that it had been transmitted. The employer's choice to attempt to use the fax machine on December 19 and not to then have any backup measures in place to ensure that the transmission had been successful was a business decision for which the employer must bear the consequences. The employer has not shown that the delay for not complying with the jurisdictional time limit was due to department error or misinformation or delay or other action of the United States Postal Service. Since the employer filed the protest late without any legal excuse, the employer did not file a timely protest. Since the administrative law judge concludes that the protest was not timely filed pursuant to Iowa Code § 96.6-2, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the protest and the reasons for the claimant's separation from employment, regardless of the merits of the employer's protest. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979);

*Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

The final wages paid by the employer to the claimant are still within the claimant's base period of his current claim for unemployment insurance benefits. The chargeability of the employer's account for any benefits that might be paid to the claimant then rests on whether benefit payments extend long enough to reach the employer's wage credits pursuant to the inverse chronological order charging under Iowa Code § 96.3-5.

**DECISION:**

The December 31, 2013 (reference 02) decision is affirmed. The protest in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided the claimant is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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