

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JACOB RYAN
Claimant

KATCOM INC
Employer

APPEAL 17A-UI-07739-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/02/17
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the July 25, 2017, (reference 04) unemployment insurance decision that allowed benefits and found the protest untimely. The parties were properly notified about the hearing. A telephone hearing was held on August 15, 2017. Claimant did not respond to the hearing notice instruction by registering for the hearing and did not participate. Employer participated through company president Tom Tiefenthaler. Department's Exhibit D-1 was received.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on July 5, 2017, and was received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of July 17, 2017. The employer attempted multiple fax numbers on the reverse side of the notice of claim when it filed its protest on July 17, 2017. It was not received at IWD. One of the fax attempts was successful on July 20, 2017, when it was received at IWD. The claimant's February 29, 2017, separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the protest is timely.

Iowa Code section 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 section 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 section 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 employer received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). The delay was due to an Agency equipment error or delay or other action pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the protest shall be accepted as timely.

The administrative law judge concludes 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. Later, when accurate information became available to the employer, it forwarded the available information to the Agency immediately after receipt. This is sufficient evidence of intent to protest any potential charges to its account.

DECISION:

The July 25, 2017, (reference 04) unemployment insurance decision is reversed. The employer has filed a timely protest. The employer is urged to not delay mail-handling between the home address and business office, keep track of document receipt dates, set an accurate time and date stamp on the fax machine, and set the machine to provide a transmission receipt.

REMAND: The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/rvs