

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW P FLOYD
Claimant

APPEAL NO. 11A-UI-07761-VST

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRIANAS LLC
Employer

OC: 04/17/11
Claimant: Respondent (1)

Section 96.6-2 – Timely Protest
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a representative dated May 19, 2011, reference 04, which held that the employer failed to file a timely protest. After due notice, a telephone conference hearing was scheduled for and held on July 21, 2011. Employer participated by Brian Beske, owner. Claimant failed to respond to the hearing notice and did not participate. The record consists of the testimony of Brian Beske. Official notice is taken of agency records.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

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

The employer is a restaurant located in Ottumwa, Iowa. A notice of claim was mailed to the employer on April 21, 2011, at the employer's correct address. The due date for any protest was May 2, 2011. The employer faxed its protest on May 12, 2011.

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 evidence established that the protest in this case was not filed in a timely manner. The claim for benefits was established on April 17, 2011, and any protest had to be postmarked by May 2, 2011. The protest was not received until May 12, 2011. Iowa law provides that a protest can be timely if the delay is due to department error or misinformation or to delay or other action of the United States Postal Service. The delay in this case was due to error on the part of the employer. Accordingly, the protest is not timely and the administrative law judge does not have jurisdiction to rule on the merits of the separation of employment.

DECISION:

The decision of the representative dated May 19, 2011, reference 04, is affirmed. The employer failed to file a timely protest.

Vicki L. Seeck
Administrative Law Judge

Decision Dated and Mailed

vls/pjs