

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ABBAY L HERIFORD
Claimant

APPEAL NO: 14A-UI-10806-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GOLDEN CIRCLE BUS SOLUTIONS INC
Employer

OC: 09/07/14
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 7, 2014, reference 02, that concluded its protest could not be accepted because it was not filed timely. A telephone hearing was held on November 6, 2014. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Karen Durbin participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Did the employer file a timely protest of the claim?

FINDINGS OF FACT:

The employer has elected to receive and submit unemployment insurance notices electronically. A notice of claim was transmitted electronically to the employer on September 12, 2014, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be submitted by the due date of September 22, 2014. The employer's protest was submitted electronically on October 1, 2014, which was after the time period for protesting had expired.

The reason for the late filing of the protest was that the employee who was assigned to handle unemployment insurance matters left the company. Karen Durbin, the director of sales and marketing took over the duties, but when she checked the notice of claim that had been transmitted, the time for protesting had already expired.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

The law provides that "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.” Iowa Code § 96.6(2). Although the statute refers to mailing the notice of claim, the rules provide that the employing unit which receives a notice of claim, “must within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual’s rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment. 871 IAC 24.8(2).

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative’s decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. On the issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code § 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. The late protest was due to an internal lapse in handling unemployment insurance matters within the company. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The unemployment insurance decision dated October 7, 2014, reference 02, is affirmed. The decision that the employer’s protest was untimely remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css