

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANTELL C RICE
Claimant

APPEAL NO. 18A-UI-01942-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

KARMA HOSPITALITY LLC
Employer

OC: 12/24/17
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Karma Hospitality LLC., filed an appeal from a representative's decision dated January 31, 2018, reference 03, that allowed benefits to the claimant and found the employer's protest untimely. After due notice was provided, a telephone conference hearing was held on March 8, 2018. The claimant was duly notified and provided a telephone number, but the claimant was not available at the telephone number provided. The employer participated by Mr. Suneil Verma, General Manager.

ISSUE:

Whether the employer protest of the claim for benefits was timely.
Whether good cause existed for late filing of the protest.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: a notice of claim filed on Shantell C Rice was mailed to the employer's last known address of record on December 29, 2017 and received by the employer at its address of record within ten days. The notice of claim contains a warning that any protest must be returned not later than ten days from the initial mailing date. The employer did not file a protest until January 19, 2018, which is after the ten day period had expired. No good cause reason has been established with the delay. The address of record was the residence of the owners. The owners were out of country during that time and had made no arrangements to have correspondence either forwarded or handled in their absence. Upon their return, the owners forwarded the notice of claim to Mr. Verma, the facility General Manager. Mr. Verma completed and forwarded the protest to Iowa Workforce Development that day, January 19, 2018.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that 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 that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any protest regarding the separation from employment.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and the delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the employer has failed to effect a timely protest pursuant to Iowa Code section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. 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).

DECISION:

The decision of the representative dated January 31, 2018, reference 03, is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect. Benefits are allowed, provided Shantell Rice satisfies all other conditions of eligibility.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn