

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TOMMY L RAY**  
Claimant

**APPEAL NO. 11A-UI-01491-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KELLY CONCRETE COMPANY INC**  
Employer

**OC: 11/28/10**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest  
Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated February 1, 2011, reference 02, that it failed to file a timely protest from the claimant's separation from employment on June 18, 2010, and that allowed benefits. A hearing was held on March 11, 2011. The claimant did not participate. Amber Koppenhaver, office manager, participated for the employer.

**ISSUES:**

Whether the protest is timely.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds that: The claimant separated from employment on June 18, 2010. The claimant filed an unemployment claim on November 28. The department mailed a notice of claim to the employer's address of record on January 14, 2011. The notice has a protest due date of January 24. The employer faxed its protest on January 26.

**REASONING AND CONCLUSIONS OF LAW:**

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.

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 appeal regarding the separation from employment.

The administrative law judge concludes that the employer failed to file a timely protest to the claimant's claim, and benefits are allowed the claimant by reason of his June 18, 2010 separation from employment, provided he is otherwise eligible.

The employer failed to establish a good cause for the late protest.

**DECISION:**

The decision of the representative dated February 1, 2011, reference 02, is affirmed. The employer failed to file a timely protest regarding the claimant's employment separation on June 18, 2010, and benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw