

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**PAUL PRESSLER**  
Claimant

**WILLOWWIND SCHOOL**  
Employer

**APPEAL 17A-UI-09773-SC**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/27/17**  
**Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Willowwind School (employer) filed an appeal from the September 15, 2017, reference 01, unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held in Cedar Rapids, Iowa at 10:00 a.m. on October 18, 2017. The claimant participated personally. The employer participated through President of the Board of Trustees Brian Codd. Claimant's Exhibit A was received with no objection. Department's Exhibit D1 was received with no objection. The employer proposed two file folders of documents that were all related to the claimant's separation which were not admitted, as the only issue to be addressed was the timeliness of the employer's protest.

**ISSUE:**

Is the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on August 29, 2017 and was received by the employer on Friday, September 8, 2017, the day it was due. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and stated any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date.

The employer did not file a protest response until September 11, 2017, which is after the ten-day period had expired, because the Interim Head of School was on maternity leave and President of the Board of Trustees Brian Codd was out of town. The office manager contacted Codd on September 8, 2017 when she received the document and notified him of the Notice of Claim. The employer made the decision to wait until Monday, September 11, 2017 to return the protest.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security 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 employer was unsure whether the Notice of Claim was received on September 8 or September 9. However, Codd did state the employer did not conduct business activities over the weekend and September 9 was a Saturday. Therefore, the employer received the Notice of Claim on Friday, September 8, 2017.

The employer's decision to wait to respond while business operations continued during the interim Head of School's maternity leave and Codd's absence, was a business decision. The delay was not due to any agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). No other good cause reason has been established for the delay. The employer has failed to timely protest pursuant to Iowa Code § 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

**DECISION:**

The September 15, 2017, reference 01, unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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