

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MIQUAL J CLAYTON
Claimant

WEBSTER CITY CUSTOM MEATS INC
Employer

APPEAL 18A-UI-01621-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/07/18
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Webster City Custom Meats, Inc. (employer) filed an appeal from the February 1, 2018, reference 01, unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on March 2, 2018. Miqual J. Clayton (claimant) participated. The employer participated through Human Resources Misty Kepler. The Department's Exhibit D1 was received.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective January 7, 2018. The notice of claim was mailed to employer's address of record on January 9, 2018. The employer usually receives its mail in a couple of days and believes the notice of claim was received within the standard timeframe, which was within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of January 19, 2018. The employer did not file a protest response until January 23, 2018, which is after the ten-day period had expired because Human Resources Misty Kepler forgot to send it back.

REASONING AND CONCLUSIONS OF LAW:

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 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's negligence in responding before the deadline when it received the notice in a timely manner is not a good cause reason for the delay. 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. As the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation 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 February 1, 2018, 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.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn