

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAUL E LANSINK**  
Claimant

**APPEAL NO. 11A-UI-01663-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLUE DIAMOND ENT**  
Employer

**OC: 12/26/10**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated February 1, 2011, reference 01, that held it failed to file a timely protest from claimant's October 21, 2009 employment separation, and which allowed benefits. A telephone hearing was held on May 16, 2011. The claimant did not participate. Kirk Scheelhaase, owner, participated. Employer Exhibit 1 was received as evidence.

The employer requested a re-scheduling of the May 25 Sioux City hearing and, after considering the matter, agreed to a telephone hearing on the timeliness of protest issue.

**ISSUE:**

Whether the employer filed a timely protest.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant filed an unemployment claim effective December 26, 2010, and the department mailed a notice of claim to the employer on January 10 with a protest due date of January 20. The employer received the notice of claim but delayed its protest until it was faxed on January 25 in order to research the matter.

**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.

While delaying a protest in order to research the matter is a good personal reason for doing so, it is not recognized as a good legal cause for the delay.

**DECISION:**

The department decision dated February 1, 2011, reference 01, is affirmed. The employer failed to file a timely protest and the department decision remains in force and effect.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw