

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ASHLEY R ELSBERRY
Claimant

SHI R2 SOLUTIONS INC
Employer

APPEAL NO. 20A-UI-12458-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/03/20
Claimant: Respondent (1)

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated October 6, 2020, reference 02, that concluded it failed to file a timely protest regarding the claimant's separation of employment on May 5, 2020, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on December 8, 2020, pursuant to due notice. Employer participated by Cindy Shirar. Claimant failed to respond to the hearing notice and did not participate. Employer's exhibits 1-5 were admitted into evidence.

ISSUE:

The issue in this matter is whether the employer's protest is timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on May 5, 2020, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned no later than ten days from the initial mailing date. The employer did not effect a protest until August 19, 2020, which is after the ten-day period had expired.

Employer forwarded a completed notice of claim to the Appeals Bureau. Said notice was signed on May 20, 2020. Employer stated that a copy of this completed Notice was sent on or around that date.

The Notice of Claim indicates on its face that it is due on May 18, 2020. Employer stated that they did not hang onto the Notice for an extended period of time before completing it and sending it back but did not state a date of receipt of the Notice. Employer additionally stated that everyone is experiencing difficulties as a result of the Covid.

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.

A portion of the Iowa 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 Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the employer has failed to effect a 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. 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 October 6, 2020, reference 02, 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.



Blair A. Bennett
Administrative Law Judge

December 17, 2020
Decision Dated and Mailed

bab/mh