

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

HEATHER R BUTLER
Claimant

APPEAL NO. 19A-UI-04777-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WASKO HARDWARE INC
Employer

OC: 05/12/19
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the June 11, 2019, reference 06, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on July 9, 2019. The claimant did not participate in the hearing. The employer participated through Susan Wasko, Owner. Department's Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The business is a small hardware store owned by a husband and wife. A clerk brings in the mail every day and places it on the wife's desk. Only the wife opens the mail. If the wife is absent, the clerk only opens items that are checks received on accounts. If the wife were to be incapacitated, the accountant would be alerted to open the mail. The husband never opens the mail.

The wife was absent from work from May 15, 2019, through June 6, 2019, to be with her sister's teenage daughter who had surgery on May 29, 2019. The wife's sister had previously passed away. The business continued to be open to the public during this time.

The claimant's notice of claim was mailed to the employer's address of record on May 21, 2019, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The wife returned to the business on June 6, 2019, and discovered the notice of claim in a pile of mail on her desk in the hardware store. On June 6, 2019, she completed the notice of claim and certified it correct, backdating her signature to May 31, 2019. The ten-day period had expired when she faxed her protest to the department.

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 employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. *The delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 4.35(2)*. The employer was open for business and able to develop business procedures for certain types of mail while one owner was absent. It did not provide sufficient evidence to show why procedures were not in place for documents from the department. The administrative law judge further concludes that 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 separation from 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 June 11, 2019, reference 06, decision 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs