

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTOPHER J HUFFORD
Claimant

RESET AMES LLC
Employer

APPEAL 18A-UI-05382-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/21/18
Claimant: Respondent (1R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the May 7, 2018, (reference 05) 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 May 29, 2018. The claimant participated and testified. The employer participated through Peter Strauss. Department's Exhibit D-1 was received into evidence.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on January 26, 2018. 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 February 5, 2018. The form advises any protest must be postmarked, faxed or returned not later than ten days from January 26, 2018. The employer did not file a protest response until May 1, 2018, which is after the ten-day period had expired. The employer sold the business effective March 27, 2017 and did not change its mailing address with Iowa Workforce Development. The successor business reopened, under a new name, at the employer's address of record. The successor business owner received the Notice of Claim several months prior to May 1, but it was not opened because it had claimant's name on it. The new owner forwarded the notice to claimant on May 1 via email.

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 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.

Here, the employer did not receive the notice of claim because it sold its business and failed to update its mailing address with the agency. The notice was sent to the last address of record, but was not passed on to the employer by the successor business for several months. 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 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 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 May 7, 2018, (reference 05) unemployment insurance decision is affirmed. Employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.

REMAND:

The issue of whether the new business (370431) is a successor business and that decision's effect on the chargeability of this employer's account (560244) is Remanded to the Tax Department of Iowa Workforce Development for initial determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/scn