

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY L SPEER

Claimant

APPEAL NO. 17A-UI-01411-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CENTENNIAL LOGISTICS LLC

Employer

OC: 12/25/16

Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Centennial Logistics LLC, the employer, filed an appeal from a representative's decision dated January 30, 2017, reference 02, which concluded the claimant, Gary L. Speer, was qualified to receive unemployment insurance benefits and the employer's account was subject to charging because the employer's protest was not timely filed. After due notice was issued, a hearing was held by telephone on March 1, 2017. Although notified, the claimant did not participate. The employer participated by Mr. Jason Middendorf, Vice President.

ISSUE:

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

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant established a claim for unemployment insurance benefits effective December 25, 2016. A notice of claim was mailed to the employer's last-known address of record on December 30, 2016. The notice of claim was received at the employer's post office box within ten days of its mailing date. The notice contained a warning that an appeal must be postmarked or received by the Agency by January 9, 2017. The protest was not filed until February 13, 2017, when it was submitted electronically by the employer, which is after the date noticed on the notice of claim.

The employer has mailed directed to the company in two ways. Some mail is sent directly to the employer's facility, and the employer chooses to have other mail sent to its post office box. Centennial Logistics LLC uses P.O. Box 71153, Des Moines, Iowa 50325 as its official address for correspondence from Iowa Workforce Development and a notice of claim was mailed to the employer's address of record. The employer checked the post office box on January 3, 2017, but did not check the box again until January 9, 2017, when the notice of claim was discovered. The employer did not submit his protest until four days later, on January 13, 2017. The employer has established no good cause reason for the delay.

REASONING AND CONCLUSIONS OF 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.

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 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. 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 January 30, 2017, reference 02, decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs