

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

COLLEEN M TERRY
Claimant

APPEAL NO: 14A-UI-05801-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LUTHERAN HOMES SOCIETY
Employer

OC: 04/27/14
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 29, 2014, reference 02, that concluded its protest could not be accepted because it was not filed timely. A telephone hearing was held on June 25, 2014. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Kris Stalkfleet participated on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUE:

Did the employer file a timely protest of the claim?

FINDINGS OF FACT:

A notice of claim was mailed to the employer's address of record on May 6, 2014, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of May 16, 2014. The employer's human resources director received the notice of claim but mistakenly believed it was for a different employee with the same first name as the claimant. She faxed in the notice of claim on May 9, 2014, but stated on the form that the claimant was laid off.

On May 19, 2014 the human resources director discovered that she had sent in the wrong information regarding the claimant's separation from employment. She resubmitted the corrected notice of claim by fax on May 20 stating that the claimant had voluntarily quit employment without good cause attributable to the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

The law provides that “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.” Iowa Code § 96.6(2)

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. On the issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code Section 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

The unemployment rules also support this outcome. In 871 IAC 24.8(3)c, the rules provide that failure by an employing unit to properly complete or sign any form provided by the department relating to the claim will result in the return of the form for proper completion or signature, but an extension of time to allow for the return of the document shall not be granted. The same reasoning would apply in this case.

DECISION:

The unemployment insurance decision dated May 29, 2014, reference 02, is affirmed. The decision that the employer's protest was untimely remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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