

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSALINDA S CASTRO
Claimant

APPEAL NO: 17A-UI-06976-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**PERRY AREA CHILD DEVELOPMENT
CORP**
Employer

OC: 06/14/17
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Perry Area Child Development Corp, the employer, filed a timely appeal from the July 6, 2017, reference 01, decision that allowed benefits to the claimant, Rosalinda Castro, and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on July 27, 2017. The claimant did participate. The employer participated by Ms. Lori Wernli, Director.

ISSUE:

The issue is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The notice of claim filed for the claimant, Rosalinda Castro, was mailed to employer's address of record on June 8, 2017, and was received by employer within ten days. The notice of claim contained a warning that any protest must be postmarked or received by the agency by June 19, 2017. The employer did not effect a protest until June 26, 2017, which is after the 10-day period had expired.

The employer received the notice of claim filed and noted the due date printed on the upper right-hand portion of the document. Ms Wernli, the director, set the notice of claim aside intending to complete it and return it to Iowa Workforce Development within the time frame allotted. Due to the press of other obligations, health issues and preparation for a personal vacation, the employer temporarily forgot and neglected to file a protest until June 26, 2017, when Ms. Wernli returned from vacation and discovered the notice of claim document. Upon finding the document, the employer filed a protest on June 26, 2017

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.

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. The notice of claim was received by the employer within ten days and it was within the employer's control and ability to file a timely protest, or in the alternative, to designate another individual in the organization to file the protest within the ten days allotted by 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 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 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 July 6, 2017, reference 01, 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. Benefits are allowed providing Rosalinda Castro satisfies all the conditions of eligibility.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs