

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLE LONG
Claimant

APPEAL 17A-UI-05464-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GREENSLADE TOWING
Employer

**OC: 04/09/17
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Greenslade Towing (employer) filed an appeal from the May 15, 2017, reference 02, unemployment insurance decision that found its protest untimely and allowed Nicole Long (claimant) to receive benefits. After due notice was issued, a hearing was scheduled for June 9, 2017. The employer followed the instructions on the hearing notice and requested a postponement of the hearing as its owner was on vacation. The request was granted. Due notice was issued again and a hearing was held on June 19, 2017. The claimant participated. The employer participated by Owner Jim Greenslade and Co-Owner/spouse Joy Greenslade. Department's Exhibit D-1 was received.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on April 18, 2017, and was received by the employer within ten days. 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 April 28, 2017. The employer did not file a protest response until May 9, 2017, which is after the ten-day period had expired. The protest was late because Owner Jim Greenslade injured his back in January and mail was being collected at the shop and delivered to his home. The mail was delivered to him once or twice a week. He did not appoint anyone to respond to mail during his recovery.

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 employer's choice to hold the mail while the business operations continued during the owner's absence was a business decision. 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 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 15, 2017, reference 02, unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs