

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARLENE GEBEL

Claimant

Y M C A

Employer

APPEAL NO: 14A-UI-00710-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/15/13

Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest/Appeal

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a department decision dated January 7, 2014, reference 02, that held it failed to file a timely protest regarding claimant's employment separation on August 26, 2013, and benefits are allowed. A telephone hearing was held on February 5, 2014. The claimant participated. Arlen Parrish, COO/CFO, participated for the employer. Employer Exhibits 1 & 2 were received as evidence.

ISSUES:

Whether the employer filed a timely protest.

Whether the employer filed a timely appeal.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant filed an unemployment claim effective December 15, 2013. The department mailed a notice of claim to the employer's address of record on December 23 with a protest due date of January 2, 2014. The employer submitted a protest by fax on January 3.

The employer granted vacation to an employee who handles the mail on or about December 23. The employer allowed the mail to accumulate during the holidays and no one was designated to open it. Mr. Parrish found the notice of claim envelope on January 3, 2014 and sent in a protest on that date.

The department mailed a decision to the employer's address of record on January 7, 2014 with an appeal deadline date of January 17. The employer faxed an appeal on January 13 to UI Appeals with documentation and included it with a matter involving employee Stigers.

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.

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

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 the employer failed to file a timely protest. The employer protest delay was the internal failure of the employer to designate an employee to open and handle the mail. This is not a good legal cause for the one-day delay.

DECISION:

The department decision dated January 7, 2014, reference 02, is affirmed. The employer failed to file a timely protest and appeal, and the department decision remains in force and effect.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs