

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERIC P MCDONNELL
Claimant

APPEAL NO. 09A-UI-00615-nt

**ADMINISTRATIVE LAW JUDGE
DECISION**

DM SERVICES INC
Employer

OC: 12/14/08 R: 04
Claimant: Respondent (2/R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

DM Services Inc. filed an appeal from a representative's decision dated January 7, 2009, reference 02, which held that the protest concerning Eric McDonnell's separation on January 4, 2008 was not timely filed. After due notice was issued, a hearing was held by telephone on January 30, 2009. Although duly notified, Mr. McDonnell did not respond to the hearing notice and did not participate. The employer participated by Ms. Dana Fritsche, Human Resource Administrator. Exhibit D-1 was received into evidence.

ISSUE:

At issue in this matter is whether the employer filed a timely protest as required by law?

FINDINGS OF FACT:

The administrative law judge having considered all of the evidence in the record, finds: That the claimant's notice of claim was mailed to the employer's address of record on December 18, 2008, but not received by the employer within ten days. The notice of claim was not received at the employer's address of record until late in the afternoon of December 30, 2008 and immediately forwarded to the company's human resource department. At the beginning of business the following day, December 31, 2008, the employer's human resource administrator, Dana Fritsche immediately telephoned Workforce Development to inform the Agency that the form had been received after the ten-day limit. Ms. Fritsche was advised to complete the form, note that it had arrived late and to forward it to the Agency. Ms. Fritsche followed those directions. The notice contains a warning that the protest must be postmarked or returned not later than ten days from the initial mailing date. The employer effected a protest in a timely manner immediately after the form was received, although it had not been received within the ten-day statutory protest period.

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.

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 has shown good cause for failure to protest within the time period prescribe by the Iowa Employment Security Law. The delay appears to be through no fault of the employer and based upon untimely delivery of the mail by the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge concludes that the employer has shown good cause to protest beyond the ten-day statutory protest period pursuant to Iowa Code section 96.6-2. The issue of Eric McDonnell's separation from employment is remanded to the Claims Section of Iowa Workforce Development for initial investigation and determination.

DECISION:

The January 7, 2009, reference 02, is reversed. The employer has shown good cause to protest beyond the ten-day statutory time period. The separation issue is remanded to Iowa Workforce Development Claims Section for initial investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

css/css