

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**PRAIS M BASS**  
Claimant

**APPEAL 19A-UI-08686-JC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KINSETH HOTEL CORPORATION**  
Employer

**OC: 10/06/19  
Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer/appellant, Kinseth Hotel Corporation, filed an appeal from the October 24, 2019 (reference 05) Iowa Workforce Development (“IWD”) unemployment insurance decision that allowed benefits and concluded the employer failed to file a timely protest. The parties were properly notified about the hearing. A telephone hearing was held on November 27, 2019. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Megan Milligan, hearing representative with Employer’s Unity. Coral Erickson, claimant specialist for Employer’s Unity, testified.

The administrative law judge took official notice of the administrative records. Department Exhibit D-1, and Employer Exhibits 1-4 were admitted. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer file a timely protest?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer, Kinseth Hotels Corporation, contacts with vendor, Employer’s Unity LLC., to handle its unemployment insurance claims. Employer’s Unity LLC., has elected to use the electronic based SIDES system to receive claims and send its protests on behalf of this employer.

A notice of claim was provided to the employer in the SIDES system with an e-mail alert on October 11, 2019. The notice of claim stated the employer protest response was due ten days from the initial notice date and gave a response deadline of October 21, 2019.

On October 15, 2019, Ms. Erickson contacted the employer about information related to the notice of claim. The employer responded the same day with information to complete the notice of claim.

On October 21, 2019, on the due date, Ms. Erickson first attempted to submit the notice of claim via SIDES. She stated she attempted to file the claim at approximately 2:18 p.m. Mountain Standard Time (3:18 p.m. Iowa time). Usually she received a confirmation of submission, and at the end of the day, she submitted a report to her manager, containing the claims she processed for the day, and proof of successful submission. However, on October 21, 2019, she learned the employer's notice of claim failed and shared the information with her manager. She left work that day, aware the claim had not been submitted but management was working after hours to resolve the issue of SIDES claims failing. No efforts were made to contact IWD, to fax or otherwise resubmit the notice of claim on October 21, 2019.

Employer's Unity confirmed it had an internal network outage from 7:50 p.m. on October 20, 2019 through 9:00 a.m. MST on October 22, 2019 (Employer Exhibit 4). Ms. Erickson didn't know when the outage was uncovered; only that she knew about it at the time she left work on October 21, 2019. No other employee from Employer's Unity testified about the timeframe of how the outage was discovered, details of the outage, or what efforts were made to timely submit claims, including the one at hand, upon learning of the outage.

The employer did not file a protest response until October 22, 2019 (Department Exhibit D-1).

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, 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 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 Admin. Code r. 871-24.8(2) provides: Notifying employing units of claims filed, requests for wage and separation information, and decisions made. 24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits. a. The employing unit which receives a Form 65-5317, Notice of Claim, or Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment. b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits. c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim. d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically. (1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within

ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time. In this case, ten days from the date Iowa Workforce Development mailed the notice of claim

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 sent.

In this case, the employer had a reasonable amount of time to file a protest. The employer's agent, Employer Unity LLC., had the information available to protest the claim on October 15, 2019, but waited until the afternoon of the final day to respond before attempting to submit the notice of claim. While the employer/employer's agent was within its rights to file a claim protest on the final day, it left little room for error or technical issues. The evidence presented confirmed that Employer's Unity LLC.'s platform outage began on October 20, 2019, so reasonably, the employer's agent (albeit maybe not Ms. Erickson) had knowledge of potential transmittal issues before 2:18 p.m. on October 21, 2019 (Employer Exhibit 4). Ms. Erickson knew when she left the office on October 21, 2019 that the claim had not been successfully submitted because of technical issues. She notified her manager before leaving, and no evidence was presented (nor did her manager attend the hearing to provide testimony) that the employer's agent then submitted the claim successfully by way of SIDES or any other method within the prescribed period of time.

Based on the evidence presented, the administrative law judge concludes that the employer's delay in filing its protest of claim 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. 871-4.35(2). The administrative law judge further concludes that 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 October 24, 2019, (reference 05) unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

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Jennifer L. Beckman  
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Decision Dated and Mailed

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