IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

ANDREW C JASINSKI
Claimant

YOUNG MENS CHRISTIAN ASSOCIATION
Employer

APPEAL NO. 06A-UI-10308-CT

ADMINISTRATIVE LAW JUDGE DECISION

OC: 10/01/06 R: 02
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Young Mens Christian Association filed an appeal from a representative's decision dated October 19, 2006, reference 02, which held that the protest concerning Andrew Jasinski's separation on December 28, 2005 was not timely filed. After due notice was issued, a hearing was held by telephone on November 6, 2006. The employer participated by Tami Ruppel, Payroll Administrator, and Makala Brinkley, Teen Director. Mr. Jasinski did not respond to the notice of hearing.

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 October 4, 2006, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until October 17, 2006, which is after the ten-day period had expired.

The employer attempted to fax its protest on the due date, October 16, but it did not transmit. The individual who was making the attempt left work at approximately 3:00 p.m. on October 16 but did not direct anyone to continue efforts at transmitting the protest. Others would have been available to fax the protest until approximately 4:30 or 5:00 p.m. The protest was found in the fax machine the following morning and faxed at that time.

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 protest regarding the separation from employment.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and 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 24.35(2). The administrative law judge further concludes that the employer has failed to effect a timely protest pursuant to Iowa Code section 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. 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 decision of the representative dated October 19, 2006, reference 02, 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, provided Mr. Jasinski satisfies all other conditions of eligibility.

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Carolyn F. Coleman
Administrative Law Judge

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Decision Dated and Mailed

cfc/pjs