

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**WILLIAM G MCLEOD**  
Claimant

**APPEAL NO. 17A-UI-11164-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TWITCHELL CONSTRUCTION INC**  
Employer

**OC: 10/01/17**  
**Claimant: Respondent (1)**

Section 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Twitchell Construction, Inc., the employer, filed an appeal from a representative's decision dated October 18, 2017, reference 02, decision that allowed benefits and found the employer's protest untimely. After due notice was provided, a telephone conference hearing was held on November 17, 2017. Although the claimant submitted a telephone number for the hearing, he was not available at the telephone number provided. The employer participated by Mr. Terry Twitchell, Company Owner.

**ISSUE:**

Whether the employer filed a timely protest.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: a notice of claim filed on William G. McLeod was mailed to the employer's last known address of record on October 3, 2017. The notice of claim contains a warning that any protest must be postmarked faxed or returned by October 13, 2017. The notice of claim was received at the employer's place of business in a timely fashion prior to the deadline for protest. Mr. Twitchell's wife, who handles office matters noted the due date but forgot to file a protest until she reviewed the document late in the afternoon on October 13, 2017. At that time, Ms. Twitchell believed that it was too late to have the protest postmarked or otherwise returned by the due date. She sent the protest in by facsimile the following morning and it was received by the Agency on the next business day, Monday, October 16, 2017 beyond the ten day statutory time limit. The employer has established no good cause reason for filing the protest beyond the statutory time limit

**REASONING AND CONCLUSIONS OF 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 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 18, 2017, 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.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn