

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRETT J REITER
Claimant

HAWKEYE COMMUNITY COLLEGE
Employer

APPEAL 16A-UI-09064-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/01/16
Claimant: Appellant (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the August 10, 2016, (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on September 7, 2016. The claimant participated. The employer participated by associate director of human resources Janine Knapp.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on May 3, 2016, and was received by employer on May 5, 2016. The notice of claim contains a warning that the protest response is due ten days from the initial notice date and gave a response deadline of May 13, 2016. The employer did not file a protest response until July 29, 2016, which is after the ten-day period had expired. The employer witness testified that a protest was faxed on May 9, 2016, but did not provide a copy of what was faxed or provide a transmission receipt. The employer's appeal letter said that the employer did not receive the Notice of Claim and the employer's July 26, 2016, letter to IWD stated that the employer did not receive a fact-finding interview notice but did not say that a protest was faxed on May 9, 2016. A fact-finding interview is not generally scheduled unless a protest is received.

REASONING AND CONCLUSIONS OF LAW:

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 § 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. Iowa Dep't of Job Serv.*, 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. Given the employer's inconsistent statements, it has not shown any good cause for not complying with the jurisdictional time limit or that the delay was 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). Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment or authority to remand for a fact-finding interview.

DECISION:

The August 10, 2016, (reference 02) unemployment insurance decision is affirmed. Employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs