

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KASHIF ANSARI
Claimant

APPEAL NO. 17A-UI-03908-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 05/22/16
Claimant: Appellant (1)

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Kashif Ansari, the claimant, filed an appeal from a representative's decision dated March 20, 2017, reference 01, which withheld \$313.00 from his Iowa unemployment claim at the request of the State of Illinois to be applied to the claimant's outstanding overpayment in the State of Illinois. After due notice was issued, a hearing was held by telephone on May 4, 2017. Mr. Ansari participated personally.

ISSUE:

At issue in this matter is whether the appeal was filed a timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: a decision to withhold \$313.00 from the claimant's unemployment insurance claim was mailed to the claimant's last known address of record on March 20, 2017. The claimant received the decision and read it. The decision contained a warning that an appeal must be postmarked or received by the Appeal Section by March 30, 2017. The appeal was not filed until April 7, 2017 which is after the date notice on the disqualification decision.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

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 March 20, 2017, reference 01, is affirmed. The appeal in this case was not timely and the decision of the representative shall stand and remain in full force and effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

scn/scn