

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**CHRISTOPHER J PAYNE**  
Claimant

**BLACKHAWK SERVICES CORP**  
Employer

**APPEAL NO. 22A-UI-03565-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/13/21  
Claimant: Respondent (2R)**

Iowa Code § 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed the representative's decision dated January 20, 2022, reference 05, that concluded it failed to file a timely protest regarding the claimant's separation of employment on August 18, 2020, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on March 7, 2022, pursuant to due notice. Employer participated by Marti Hamilton with Insperity PEO Services. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibits 1-2 were admitted into evidence.

**ISSUES:**

Whether the employer's protest is timely?

**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 June 17, 2021, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned no later than June 28, 2021. The employer did effect a protest through facsimile on June 28, 2021. This is shown through Employer's Exhibit 1.

**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.

A portion of the Iowa 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 shown that they did comply with the jurisdictional time limit. Therefore, the administrative law judge retains jurisdiction to entertain any protest regarding the separation from employment.

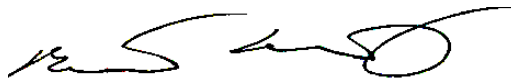
The administrative law judge concludes the employer effected a timely protest within the time period prescribed by the Iowa Employment Security Law. The administrative law judge further concludes that the employer has effected a timely protest pursuant to Iowa Code § 96.6-2, and the administrative law judge retains 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).

This matter will be remanded to the fact finder for a determination on the separation issue.

**DECISION:**

The decision of the representative dated January 20, 2022, reference 05, is reversed. The employer has filed a timely protest, and the decision of the representative is reversed.

This matter will be remanded to the fact finder for a determination on the separation issue.



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Blair A. Bennett  
Administrative Law Judge

March 23, 2022  
Decision Dated and Mailed

bab/scn