

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**RAMIRO RANGEL PALAFOX**  
Claimant

**WINTERS PORK INC**  
Employer

**APPEAL 18A-UI-00156-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/26/17  
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the December 22, 2017, (reference 03) 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 January 30, 2018. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer was represented by Jenny L. Winterfeld, attorney at law. Norma Winters, secretary/treasurer/co-owner, testified. Lloyd Winters attended as an observer. Department's Exhibit D-1 was received. Employer's Exhibit A was also admitted. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**NOTE TO EMPLOYER:** To become a SIDES E-Response participant, you may send an email to [iwd-sidesinfo@iwd.iowa.gov](mailto:iwd-sidesinfo@iwd.iowa.gov). To learn more about SIDES, visit <http://info.uisides.org>.

**ISSUE:**

Is the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on November 30, 2017. The notice of claim contains a warning that the employer protest response was due ten days from the initial notice date and gave a response deadline of December 11, 2017. The employer did not file a protest response until December 12, 2017, (Department Exhibit D-1) which is after the ten-day period had expired.

Ms. Winters went out of the country unexpectedly on vacation from November 29, 2017 through December 4, 2017, which coincided with the mailing of the notice of claim on November 30, 2017. Ms. Winters indicated mail from Des Moines usually is received in two to three days from the date of mailing. On December 6, 2017, Ms. Winters retrieved her mail, which was collected

in her absence, and stacked on a counter. She indicated she was busy with other business matters, including payroll, and did not open the piece of mail containing the notice of protest until December 12, 2017. At that time, she saw the due date of December 11, 2017, and panicked.

She completed her notice of claim. Under the section labeled, "certified correct by", Ms. Winters signed her name and dated it as December 11, 2017, which coincided with the due date, but before she actually opened the notice of claim (Department Exhibit D-1). She then completed the notice of claim and mailed it on December 12, 2017.

Ms. Winters also indicated she was initially confused by the claimant's name contained on the notice of protest; the employer has approximately five employees and has not had another "Ramiro" work for them in the past year and a half. However, when employed, Mr. Rangel Palafox went by the claimant name "Ramiro Palafox" (Employer Exhibit A). Ms. Winters did not attempt to search her database of employees by social security number in assistance to completing her claim.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, 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. 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 appeal regarding the separation from employment.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. Based on the

evidence presented, the employer failed to file a protest within the time period prescribed by Iowa Code Section § 96.6(2).

Pursuant to rule Iowa Admin. Code r. 871-24.35(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). The postage meter mark on the last day for filing does not perfect a timely appeal if the postmark affixed by the United States Postal Service is beyond the filing date. *Pepsi-Cola Bottling Co. of Cedar Rapids v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

In this case, Ms. Winters did not check employer mail for a period of six days, which coincided with the mailing of the notice of claim and due date to respond, after she returned to the office from an unexpected vacation. During November 29 and December 4, 2017, the employer mail was collected for Ms. Winters and stored on a counter for her when she returned. She acknowledged she first checked mail on December 6, 2017, but was busy with payroll and business matters and did not get to opening the letter containing the notice of claim until December 12, 2017. The employer's choice to not have help for Ms. Winters to open her mail in her absence or upon her return was a business decision. Upon opening her mail, the employer discovered the notice of claim was due the prior day, December 11, 2017. Ms. Winters filled it out, with an inaccurate certified completion date of December 11, 2017 and mailed it on December 12, 2017.

It is the duty of the administrative law judge as the trier of fact in this case, to determine the credibility of witnesses, weigh the evidence and decide the facts in issue. *Arndt v. City of LeClaire*, 728 N.W.2d 389, 394-395 (Iowa 2007). The administrative law judge may believe all, part or none of any witness's testimony. *State v. Holtz*, 548 N.W.2d 162, 163 (Iowa App. 1996). In assessing the credibility of witnesses, the administrative law judge should consider the evidence using his or her own observations, common sense and experience. *Id.* In determining the facts, and deciding what testimony to believe, the fact finder may consider the following factors: whether the testimony is reasonable and consistent with other believable evidence; whether a witness has made inconsistent statements; the witness's appearance, conduct, age, intelligence, memory and knowledge of the facts; and the witness's interest in the trial, their motive, candor, bias and prejudice. *Id.* Assessing the credibility of the witness and reliability of the evidence in conjunction with the applicable burden of proof, as shown in the factual conclusions reached in the above-noted findings of fact, the administrative law judge concludes that the employer did receive the notice of claim within the prescribed period but delayed in responding, while tending to other business matters, such as payroll, after being out of the office for vacation. The administrative law judge is not persuaded the listing of the claimant's name as "Ramiro Rangel" instead of "Ramiro (Rangel) Palafox", on the notice of claim contributed to the delay in filing of the employer's protest, inasmuch as the employer only had one employee named Ramiro over the past year (out of a staff of approximately five people).

The administrative law judge is sympathetic to the employer, but based on the evidence presented, concludes that the employer's failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand for a fact-finding interview. Iowa Code § 96.6(2).

**DECISION:**

The December 22, 2017, (reference 03) unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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