

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ROSALIE A GILMORE
Claimant

APPEAL NO. 08O-UI-06531-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A & N OF RIVER CITY INC
Employer

OC: 04/27/08 R: 02
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

A & N of River City Inc. filed an appeal from a representative's decision dated May 16, 2008, reference 05, which held the protest concerning Rosalie Gilmore's separation on March 28, 2007 was not timely filed. After due notice was issued, a hearing was held by telephone on July 30, 2008. Although notified, the claimant did not respond to the hearing notice and did not participate. The employer participated by Ms. Mae Miles, Manager.

ISSUE:

At issue in this matter is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

The administrative law judge having considered all of the evidence in the record, finds: The claimant's notice of claim was mailed to the employer's address of record on May 2, 2008 and received by the employer within ten days at its address of record. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until May 13, 2008, which is after the ten-day period had expired. The notice of claim filed was sent to the employer's address of record in Austin, Minnesota, and received by the employer on Friday, May 9, 2008. Although contacted by the office location in Minnesota, the local manager did not obtain employment records for the claimant from a storage area until Monday, May 12, 2008, of the next week. The manager did not consider weekends to be "working days" for the purposes of administrative duties. For reasons that are unclear, the company's facility in Minnesota did not forward the protest to Iowa Workforce Development on May 12, 2008 by faxing or having it postmarked before the next day. It appears that the employer through its internal policies desires to submit supporting documentation and the delay may have been occasioned by that activity. The form was sent to Iowa Workforce Development by facsimile on May 13, 2008, one day after the statutory ten-day time limit had elapsed.

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.

The Iowa Supreme Court of Iowa held that a portion of this same Code section 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 Department of Job Service, 276 N.W.2d 373 (Iowa 1979).

The facts of this case establish that the employer received the notice of claim file within ten days and that the ability to respond at merely indicating disqualifying information such as that the claimant voluntarily quit or was discharged for misconduct and providing a date, signing the form and delivered by the United States Postal Service or facsimile within the ten-day time limit. The employer chose to have its official correspondence sent to the state of Minnesota where its offices are located. The delay in the local office being informed of the claim being filed thus is not attributable to Workforce Development. That was made by choice of the employer. The evidence also establishes that the local manager was made aware that a claim had been filed on May 9, 2008, but delayed in providing information to the corporate headquarters until the following Monday because the manager considered weekends to not be workdays for administrative purposes. Although disqualifying information had been provided to the headquarters by the due date, May 12, 2008, the headquarters for reasons that are unknown did not forward the protest to Workforce Development until the following day which was beyond the ten-day statutory limit. The administrative law judge thus concludes that the employer has not shown good cause for complying with the jurisdictional time limit.

The administrative law judge concludes that 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 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. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979); Franklin v. Iowa Department of Job Service, 277 N.W.2d 877 (Iowa 1979) ; and Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

DECISION:

The decision of the representative dated May 16, 2008, reference 05, 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. Benefits are allowed, providing Rosalie Gilmore satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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