

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

LYNNETTE BUTTS

Claimant

APPEAL NO. 14A-UI-10453-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DEVELOPMENTAL SERVICES OF IOWA

Employer

OC: 08/24/14

Claimant: Respondent (2/R)

Iowa Code § 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Developmental Services of Iowa (employer) appealed an unemployment insurance decision dated September 29, 2014, (reference 01), which held it failed to file a timely protest regarding the claimant's separation of employment on August 27, 2014, and no disqualification of unemployment insurance benefits was imposed. Due notice was issued scheduling the matter for a telephone hearing to be held October 28, 2014. Because the protest form was not scanned into the computer system, no hearing was held.

ISSUE:

The issue is whether the employer's protest was timely.

FINDINGS OF FACT:

The administrative law judge, having reviewed and 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 September 12, 2014, and received by the employer within ten days. 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 believes it filed its protest in a timely manner. The Agency has not scanned the protest into the computer system so the Administrative Law Judge has no way to determine whether the protest was timely or not.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether the employer submitted a timely protest. An employer has ten days from the date a notice of claim is mailed to its last-known address to protest the payment of benefits to the claimant. See Iowa Code § 96.6-2.

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 § which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

In the case herein, no evaluation can be made as to the timeliness of the protest. Consequently, the protest is assumed to be timely based on the employer's statements.

Since the separation issues have not yet been adjudicated, the case will be remanded for an initial investigation and determination.

DECISION:

The employer's protest is timely. The unemployment insurance decision dated September 29, 2014, (reference 01), is reversed. The case is remanded for an initial investigation and determination.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css