

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

BRANDON M BEAVER
Claimant

APPEAL NO. 15A-UI-10561-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD
Employer

OC: 08/30/15
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Parco Ltd. filed an appeal from a representative's decision dated September 18, 2015, reference 02, that allowed benefits for the claimant finding that the employer's protest was untimely. After due notice was provided, a hearing was held by telephone on October 5, 2015. The claimant did participate. The employer participated through Ms. Kari Krogman, Office Manager and Ms. Kristi Penner, Payroll Clerk.

ISSUE:

At issue in this matter is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having reviewed all of the evidence in the record, finds that: The notice of claim on the claim of Brandon Beaver was mailed to the employer's address of record on September 3, 2015, and received by the employer within ten days. The notice of claim contained a warning that any protest must be postmarked, faxed or electronically submitted not later than ten days after the initial mailing date. Because ten days from the initial mailing date fell on a Sunday, the date that the protest must be received by was moved to Monday, September 14, 2015. The employer did not effect a protest until the following day, September 15, 2015, which is after the ten-day period had expired.

Although the employer received the notice of claim electronically on September 4, 2015, the employer was unable to complete the form and to return it by its due date because Ms. Krogman, the office manager was away from work and remaining employees were busy completing payroll during the time that the form was due to have been sent back and received by Iowa Workforce Development. The employer completed the protest and submitted it electronically Tuesday morning, September 15, 2015, after the ten-day period had expired.

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.

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 September 18, 2015, reference 02, 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, provided Brandon Beaver satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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