

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RACHEL R HINES
Claimant

PALM TREE LLC
Employer

APPEAL 20A-UI-10638-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (1)

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 2, 2020, reference 02, decision that allowed benefits and found the protest untimely. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 22, 2020. The claimant participated personally. The employer participated by Garen Palmer, President, and Sara Van Neikerk, Store Manager.

Department's Exhibit D-1 was received into evidence. The employer offered and Exhibit One was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: Starting on March 17, 2020, the employer was not open for business due to Covid-19. The United States Postal Service normally delivered mail inside the business because the employer did not provide a mailbox outside its establishment. The employer continued to work at the business but the United States Postal Service started holding the employer's mail. The employer did not contact the department to change its address temporarily. It contacted the United States Postal Service and had its mail forwarded to another address.

The claimant's notice of claim was mailed to the employer's address of record on April 15, 2020. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than April 27, 2020. The employer was uncertain when he received the protest. He signed the protest on May 5, 2020, and mailed it on May 6, 2020. The protest was not received by the agency until September 8, 2020.

An August 25, 2020, reference 01, decision was issued finding the claimant eligible to receive unemployment insurance benefits because the employer did not file a timely protest. The decision was received by the employer within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by August 25, 2020. The employer mailed an appeal on August 27, 2020, but was never received by the department.

A September 2, 2020, reference 02, decision was issued amending the August 25, 2020, reference 01, decision. It found the claimant eligible to receive unemployment insurance benefits because the employer did not file a timely protest. The decision was received by the employer within ten days. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 12, 2020. The employer placed an appeal in a mailbox on September 8, 2020. It was postmarked on September 8, 2020.

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).

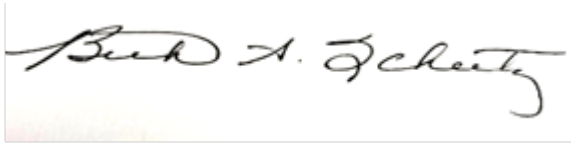
Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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.

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. *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 4.35(2)*. The employer did not take steps to notify the Agency of its correct address. One cannot fail to provide information to the Agency and then rely on that failure when it does not respond. The administrative law judge further concludes that the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from 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 September 2, 2020, reference 02, decision 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.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz
Administrative Law Judge

October 26, 2020
Decision Dated and Mailed

bas/scn