

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI	
JUAN M CHAVIRA Claimant	APPEAL NO. 19R-UI-02986-S1-T
STORY CONSTRUCTION COMPANY Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 01/13/19 Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The Story Construction Company (employer) filed a timely appeal from the February 11, 2019, reference 02, decision that allowed benefits and found the protest untimely. After due notice was issued and a hearing was scheduled, Administrative Law Judge Boucher issued a decision on March 12, 2019, affirming the representative's decision. A decision of remand was issued by the Employment Appeal Board on April 8, 2019. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for April 26, 2019. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer provided a telephone number but could not be reached at the time of the hearing. The administrative law judge left a message for the employer. Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having 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 January 16, 2019, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer returned a blank protest on January 28, 2019. It did not check the box next to "I am NOT protesting the claim" or any other box. No signature appeared on the document certifying any information as correct.

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 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 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).

The protest contains the following warning. "The information provided below in the employer statement of protest section must be certified correct which can be accomplished by completing and signing the signature section on this form. Incomplete protest forms will be returned to the employer with the same protest due date. Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above." The employer did not complete any area inside the Signature Box or on any portion of the protest form. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

DECISION:

The representative's February 11, 2019 decision (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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs