

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANGELA HALL**  
Claimant

**APPEAL 19A-UI-00751-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LINN MAR COMMUNITY SCHOOL  
DISTRICT**  
Employer

**OC: 12/23/18  
Claimant: Respondent (1)**

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Iowa Code § 96.6(2) - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 18, 2019, (reference 02), decision that allowed benefits finding the employer's notice of protest was not filed in a timely manner. After due notice was issued, a hearing was held by telephone conference call on February 12, 2019. Claimant did participate. Employer participated through Heather Jordan, Human Resources Generalist. Official notice was taken of agency records

**ISSUE:**

Did the employer file a timely protest?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The employer participates in the SIDES system. They are notified of notices of claim via an e-mail in an electronic system. Ms. Jordan has been receiving and reviewing the e-mails since 2016. Agency records show an e-mail was sent to the correct e-mail address on December 24, 2018. The employer had until January 7, 2019 to file a protest to the notice of claim. The employer did not file their notice of protest until January 16, 2019 when Ms. Jordan was in the system working on another claim and noticed the pending claim for Ms. Hall. Agency records show that even after this notice of claim e-mailed to the employer another was successfully e-mailed to the same e-mail address. While the employer was closed of the holiday, Ms. Jordan returned to work on January 2 and had ample opportunity to file a notice of claim prior to the January 7, 2019 deadline. 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.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security 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 is not persuaded that the e-mail was not properly sent. It was simply missed by the employer as other e-mails sent to an identical address were received by the employer. No agency records show the e-mail being returned and the notice of claim was in the employer's electronic file. The employer has not shown any good cause for failure to comply with the jurisdictional time limit or that the delay was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(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 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 January 18, 2019 (reference 02) decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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