

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

GABRIEL J SIMMERMAN
Claimant

APPEAL NO. 18A-UI-01195-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPRING VALLEY RADIO INC
Employer

OC: 12/10/17
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 16, 2018, reference 03, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on February 18. The claimant participated personally. The employer participated by February 19, 2018. Department's 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 heard the testimony 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 December 15, 2017, and received by the employer's representative 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 notice of claim also states, "The employer statement of protest section, including full date, must be completed on all responses. Incomplete protest forms will be returned to the employer with the same protest due date."

The employer's representative requested information from the employer but received none by December 26, 2017. It attempted to file a notice of claim with no information on December 26, 2017. The fax did not transmit. The employer's representative did not file a protest with information until December 29, 2017, which is after the ten-day period had expired. No good cause has been established for the delay of information from the employer to the employer's representative.

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).

DECISION:

The January 16, 2018, reference 03, 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs