

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEVI A NOAH
Claimant

APPEAL NO. 17A-UI-07803-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

KING-KNUTSON CONSTRUCTION INC
Employer

OC: 07/09/17
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

King-Knutson Construction, Inc., the employer, filed a timely appeal from the July 31, 2017, reference 04, unemployment insurance decision that allowed benefits and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone on August 18, 2017. Although notified, claimant did not participate. The employer participated by Ms. Teresa L. Rickel, Office Manager. Department Exhibit D-1 was admitted into evidence.

ISSUE:

Whether the employer's protest of the claim for benefits was timely, and whether good cause existed for late filing of the protest?

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds: On July 13, 2017, Iowa Workforce Development mailed to the employer's address of record notice that Levi Noah had filed a claim for unemployment insurance benefits. The notice of claim contains a warning that any protest must be postmarked, faxed or returned by the due date that was set forth on the notice (ten days from the date that the employer had been sent the notice). The notice of claim was received at the employer's place of business in the ordinary course of the delivery of the mail, prior to the deadline protest. The employer filed its protest electronically on July 26, 2017, which is after the ten day period had expired.

The employer's delay in returning the protest on this claim took place because the company's manager was temporarily away from the office on vacation and because the notice was misplaced by staff members. When Ms. Rickel returned to the office and discovered the notice of claim, she immediately took action to protest the claim, submitting the protest electronically on July 26, 2017.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 sympathetic to the employer's situation, but concludes that the employer's 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 24.35(2). The administrative law judge further concludes that the employer failed to effect a 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 decision of the representative dated July 31, 2017, reference 04, is affirmed. The employer failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn