

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLA R HANER

Claimant

APPEAL NO: 11A-UI-01961-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CROSSROADS OF WESTERN IOWA

Employer

OC: 01/09/11

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 15, 2011, reference 02, that held it failed to file a timely protest to the claimant's employment separation on August 30, 2010, and benefits are allowed. A telephone hearing was held on March 15, 2011. The claimant did not participate. Jackie Collins, HR Generalist, participated for the employer.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant filed an unemployment claim effective January 9, 2011. The department mailed a notice of claim to the employer address of record on January 14 with a requested due date of January 24. The employer HR representative did not get the notice of claim until after the due date, and she faxed a protest on February 4. There is no evidence the mailing delayed the receipt of the notice of claim, and the HR representative could offer no explanation for the delay.

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 the employer failed to file a timely protest.

The employer had no evidence the postal service delayed the mailing of the notice of claim, and why the HR representative got it after the ten-day period. There was no evidence the matter was investigated to see if the delay could have been an internal handling of the claim. Absent a good cause for the delay, February 4 is more than ten-days after the deadline for a time protest.

DECISION:

The department decision dated February 15, 2011, reference 02, is affirmed. The employer failed to file a timely protest, and the department decision remains in force and effect as to the claimant's employment separation on August 30, 2010. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css