

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELANIE L KLINGENSMITH**  
Claimant

**APPEAL NO. 18A-UI-01316-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MATCH PLAY TENNIS CENTERS INC**  
Employer

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

Section 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Match Play Tennis Centers, Inc., the employer, filed an appeal from a representative's decision dated January 26, 2018, reference 03, which held that the protest concerning Melanie Klingensmith's separation on January 30, 2017, was not timely filed. After due notice was issued, a hearing was held by telephone on February 21, 2018. Although duly notified, the claimant did not participate. The employer participated by Mr. Michael Duffy, Acting Director/Co-Owner.

**ISSUE:**

Whether the employer filed a timely protest as required by law.

**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 employer's address of record on December 21, 2017. The notice of claim contained a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until January 9, 2018, which is after the ten day period had expired.

The address that the employer has chosen for its address of record: 400 Collins Rd NE, Cedar Rapids, Iowa 52498. The address of record used by the employer is the physical address of the Rockwell Collins Company at its campus location, located in Cedar Rapids, Iowa.

It is the employer's belief because the Rockwell Collins Company was shut down during the Christmas holiday season, the mail was not forwarded by a Rockwell Collins Company employee to Match Play Tennis Centers, Inc. location until after the holiday season had ended and Rockwell Collins employees had returned. The actual physical location for the Match Play Tennis Centers, Inc. is 800 Collins Rd. NE, Cedar Rapids, Iowa 52498.

The employer asserts that even if the employer had chosen to use its actual street address for the company's address of record, the employer may have not received it timely because the US Postal Service and private delivery services customarily deliver all mail addressed to another

location on the campus to the 400 Collins Rd. NE, Cedar Rapids, Iowa 52498, and then Rockwell Collins employees disburse the mail to correct locations on the company's campus.

### **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 protest regarding the separation from employment.

In the case at hand, the employer specifically chose to have its official correspondence from Iowa Workforce Development be delivered to the physical address of Rockwell Collins, Inc. The notice of claim filed was not mishandled or delayed by the action of the U.S. Postal Service, but due to delays at the business location where the employer had chosen to have its official correspondence delivered. Although the employer asserts that no matter what address the employer used for a business in the Rockwell Collins campus, all the mail would be delivered to the 400 Collins Rd. NE, Cedar Rapids, Iowa 52498 address by the U.S. Postal Service and private carriers.

The administrative law judge cannot speculate regarding that scenario. The evidence in the record in this appeal clearly established that the employer had chosen the Rockwell Collins Inc. address for its official correspondence; unfortunately the address chosen by the employer for its official address of record, received the notice of claim timely but failed to forward it to Match Play Tennis Centers, Inc. until after its due date.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and 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 has failed to effect a timely protest pursuant to Iowa Code section 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 unemployment insurance decision dated January 26, 2018, reference 03, 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. Benefits are allowed, provided Melanie Klingensmith satisfies all other conditions of eligibility.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

tn/scn