

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CORTEZ L HENDERSON
Claimant

P J IOWA LC
Employer

APPEAL 17A-UI-08337-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/23/17
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the August 11, 2017, (reference 02) unemployment insurance decision that allowed benefits based upon an untimely protest. The parties were properly notified about the hearing. A telephone hearing was held on September 1, 2017. Claimant did not participate. Employer participated through director of human resources Kim Donaldson. Department's Exhibit D-1 was received.

ISSUE:

Is the protest timely?

FINDINGS OF FACT:

The SIDES notice of claim was e-mailed to the employer's address of record on July 28, 2017. The notice of claim stated that the response was due by August 7, 2017. Employer received the email prior to the response deadline. However, director of human resources Kim Donaldson was out on medical leave and did not return to the office until August 9, 2017. Employer did not assign anyone to monitor Donaldson's email while she was on leave. Donaldson filed the protest as soon as she returned on August 9, 2017.

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.

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. Employer's decision not to have another employee monitor Donaldson's mail during leave was a business decision. *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 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 August 11, (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.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/scn