

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ERYN M VOOGD**  
Claimant

**METHODIST MANOR**  
Employer

**APPEAL 18A-UI-11089-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/25/18  
Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 7, 2018, (reference 11) that allowed benefits finding the employer's notice of protest was not timely filed. The parties were properly notified about the hearing. A telephone hearing was held on November 29, 2018. Claimant participated. Employer participated through Connie Jensen, Director of Human Resources. Official notice was taken of agency records.

**ISSUE:**

Did the employer file a timely notice of protest?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on October 3, 2018. The employer had built a new building and was in the process of moving from the old building to the new building when the notice of claim was received. The notice of claim was misplaced inside the building and did not get delivered to the proper person until October 31, 2018, by which time the date to file a timely protest had passed. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than October 15, 2018. Employer did not file a protest until November 1, 2018, which is after the ten-day period had expired. No good cause reason has been established for the delay.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security 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 notice of claim was properly and timely delivered to the employer at the correct address. Due the employer moving between buildings, the notice of claim was misplaced and the not given to the correct employee to process until after the time to file a protest had passed. The delay in filing the protest 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 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 November 7, 2018 (reference 11) 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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