

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BROC T GOLDEN

Claimant

APPEAL 17A-UI-04457-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

GASTRO PUB ON FALCON AVENUE LLC

Employer

OC: 03/26/17

Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Gastro Pub on Falcon Avenue, LLC (employer) filed an appeal from the April 17, 2017, reference 02, unemployment insurance decision that found its protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on May 15, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through Manager Rachel Hart. Department's Exhibit D-1 was received.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on March 31, 2017, and was received by employer on April 5, 2017. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of April 10, 2017. Hart filled out and signed the protest on April 8, 2017. However, the protest was postmarked April 11, 2017, which is after the ten-day period had expired because that was when Hart went to the post office. She had worked the closing shift on April 10, 2017 and dropped it off after her shift ended at approximately 11:30 that evening, after the post office had closed for the day.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the employer has failed to protest response within the time period prescribed by the Iowa Employment Security 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 employer's choice to not mail the protest when it had it for five days 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 Iowa Admin. Code r. 871-24.35(2). No other good cause reason has been established for the delay. 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 *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

DECISION:

The April 17, 2017, reference 02, unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn