IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU

MORIAH STEWART
Claimant

IOWA MAINSTREET INSURANCE LC
Employer

APPEAL 19A-UI-07070-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/28/19
Claimant: Respondent (1)

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 26, 2019, reference 02, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on September 30, 2019. The claimant did participate. The employer participated in the hearing through Randall Rings, General Counsel. Department's Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on August 1, 2019, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer's mail room received the notice of claim but did not give it to a member of management. It kept it in the mailroom. On August 15, 2019, the employer became aware that a notice of claim had been mailed to it.

On August 16, 2019, the employer found it in the mailroom. The protest contains the following warning. "The information provided below in the employer statement of protest section must be certified correct which can be accomplished by completing and signing the signature section on this form. Incomplete protest forms will be returned to the employer with the same protest due date. Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above." The general counsel did not date his signature the signature box. A protest may be faxed, mailed, or hand delivered. The protest was mailed and not postmarked until August 19, 2019, which is after the ten-day period had expired.

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). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

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.

DECISION:

The August 26, 2019, reference 02, decision 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.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs