

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL R HARVEY
Claimant

APPEAL NO. 17A-UI-11837-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CULVERS LAWN CARE AND
Employer

OC: 01/08/17
Claimant: Appellant (1)

Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Michael Harvey, the claimant, filed an appeal from a representative's decision dated November 3, 2017, reference 02, which denied unemployment insurance benefits as of October 15, 2017 upon a finding that the claimant was not able to perform work at that time due to illness. After due notice was issued, a telephone conference hearing was held on December 7, 2017. Claimant participated personally. Participating for the witness was Ms. Victoria St. John, claimant's significant other. The employer participated by Ms. Lisa Eckhardt, Human Resource Manager.

ISSUE:

Whether the appeal was filed timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: a disqualification notice was mailed to the claimant's last known address of record on November 3, 2017. The decision was received at the claimant's address of record. The decision contained a warning that an appeal must be postmarked and received by November 13, 2017. The appeal was not completed and signed by the claimant, Mr. Harvey until November 14, 2017 and the appeal was not filed until November 15, 2017 which is after the date notice on the disqualification decision. The claimant has supplied no good cause reason for delay in filing this appeal.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides:

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 representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information

concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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.

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 representative's unemployment insurance decision dated November 3, 2017, reference 02, is hereby affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn