

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STEPHEN G SALMONS
Claimant

APPEAL NO. 09A-UI-02097-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE SPORTS PAGE INC
Employer

**OC: 01/04/09 R: 02
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer, The Sports Page, filed an appeal from a decision dated February 2, 2009, reference 02. The decision found the employer's protest was not timely. After due notice was issued, a hearing was held by telephone conference call on February 26, 2009. The claimant provided a telephone number to the Appeals Section. That number was dialed at 1:00 p.m. and the only response was a voice mail. A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 1:13 p.m., the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by General Manager Joe Ripperger. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the protest is timely.

FINDINGS OF FACT:

Claimant's notice of claim was mailed to employer's address of record on January 9, 2009, and received by 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. Employer did not file a protest until January 29, 2009, which is after the ten-day period had expired. No good-cause reason has been established for the delay.

The record was closed at 1:13 p.m. At 1:35 p.m., the claimant called in response to the voice mail message. He had misread the notice of the hearing and thought it was scheduled to begin at 1:30 p.m. and was therefore not present to answer his phone when the judge called.

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. *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 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).

The next issue is whether the record should be reopened. The judge concludes it should not.

871 IAC 26.14(7) provides:

- (7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.
 - a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
 - b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
 - c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

The claimant received the notice of the hearing and responded by providing a telephone number where he could be reached. However, since he misread the information, kjw he was not present at the time the hearing was scheduled to begin. Although the claimant may have intended to participate in the hearing, he failed to carefully read the information on the notice. He did not establish good cause to reopen the hearing and his request to reopen the hearing is denied.

DECISION:

The representatives' decision dated February 2, 2009, reference 02, 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.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw