

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRYSON P KINYON
Claimant

APPEAL 18A-UI-11776-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARTLETT ELECTRIC INC
Employer

**OC: 11/04/18
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Untimely Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 26, 2018, (reference 01) decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on December 20, 2018. The employer participated through Joseph Bartlett, Owner. Claimant participated personally. Employer's Exhibit 1 was admitted into the record.

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: The claimant's notice of claim was mailed to the employer's address of record on November 6, 2018. The employer chose to receive their mail from the agency at their home address. The employer's children obtained the mail from the mail box and the employer found the notice of claim in a vehicle on the night of November 18. The notice of claim had been in the vehicle for some time as there was no mail delivery on Sunday November 18, 2018. At hearing Mr. Bartlett admitted he had probably gotten the notice of claim ten days before he filed the protest, but it was not dealt with because one of his kids left it in the car. The employer filed its protest on November 19, 2018. The employer had opened a Des Moines business office about three years ago, but did not change their mailing address from their home to their business address.

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 employer's delay in filing their notice of 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 26, 2018, (reference 01) 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs