

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KAREEM COLLINS**  
Claimant

**ALB LLC ARBY'S RESTAURANT**  
Employer

**APPEAL 17A-UI-02658-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/12/17**  
**Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

ALB, LLC Arby's Restaurant (employer) filed an appeal from the March 2, 2017, reference 03, 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 April 3, 2017. Kareem Collins (claimant) did not respond to the hearing notice and did not participate. The employer participated through Jennifer Breitsfelder. 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 February 17, 2017, and was received by the employer shortly thereafter. The notice of claim contains a warning that the employer's protest response is due ten days from the initial notice date and gave a response deadline of Monday, February 27, 2017. The employer completed the protest to the claimant's benefits on February 23, 2017. However, it forgot to return the protest until the day after it was due. The employer's protest response was faxed back to Iowa Workforce Development (IWD) on February 28, 2017, which is after the ten-day period had expired.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that 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 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 made a mistake which is not good cause for a failure to comply with the jurisdictional time limit. 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). Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

**DECISION:**

The March 2, 2017, reference 03, 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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