

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA J ERDMAN
Claimant

APPEAL NO: 12A-UI-04950-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

FOUR WAY INSULATION INC
Employer

**OC: 04/01/12
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest
871 IAC 26.14(7) – Late Call

STATEMENT OF THE CASE:

The employer appealed a department decision dated April 18, 2012, reference 01, that held it failed to file a timely protest regarding claimant's employment separation on July 4, 2011, and benefits are allowed. A telephone hearing was scheduled for May 21, 2012. The claimant and employer did not participate.

ISSUES:

Whether the record should have been re-opened.

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant filed an unemployment claim effective April 1, 2012. The department mailed a notice of claim to the employer to its address of record on April 4 with a protest due date of April 16. The employer faxed a protest on April 17.

The employer was not available when called for the hearing. The employer called in more than 15-minutes after the scheduled time and stated he was talking with a customer when called.

REASONING AND CONCLUSIONS OF LAW:

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.

At issue is a request to reopen the record made after the hearing had concluded. The request to reopen the record is denied because the party making the request failed to participate by reading and following the instructions on the hearing notice.

The employer failed to offer a good cause for not being available when called for the hearing and the delay it took to request to participate, thereafter.

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 administrative law judge concludes that the employer failed to file a timely protest, as it was not within the ten-day period required by law. Since the tenth day fell on a Saturday (April 14), the employer was given two additional days to Monday the 16th to get it done timely.

DECISION:

The department decision dated April 18, 2012, reference 01, is affirmed. The employer failed to file a timely protest, and the department decision remains in force and effect.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs