

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MIGUEL REYES
Claimant

APPEAL NO. 09A-UI-00700-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

S & J TUBE INC
Employer

OC: 12/07/08 R: 04
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

S & J Tube, Inc. filed an appeal from a representative's decision dated January 7, 2009, reference 03, which held that the protest concerning Miguel Reyes' separation on July 15, 2007 was not timely filed. After due notice was issued, a hearing was held by telephone on February 2, 2009. The employer participated by Julie Belger, Human Resources Manager. Mr. Reyes did not respond to the notice of hearing.

ISSUE:

At issue in this matter is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on December 15, 2008, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until December 31, 2008, which is after the ten-day period had expired.

Julie Belger, the individual who completed the employer's protest, was out of the office beginning December 10, 2008. At least three office personnel and the owner of the business were present during her absence. The plant was on shut-down from December 22 until January 1. Mail continued to be picked up except for the period from December 29 through January 1. The envelope in which the notice of claim was mailed has a warning that it contains dated material

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.

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. The employer failed to establish that the notice of claim was not received in sufficient time to file a timely protest. Although Ms. Belger was away from the office during the protest period, there were others in the business who could have completed the protest in her absence. Since the employer continued to pick up its mail during the major portion of the shut-down, it is concluded that the shut-down did not prevent a timely protest. For the above reasons, 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 decision of the representative dated January 7, 2009, reference 03, is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect. Benefits are allowed, provided Mr. Reyes satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/css