

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYREE J MILLSAP
Claimant

APPEAL NO: 17A-UI-05627-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AZULE STAFFING LLC
Employer

OC: 04/30/17
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer, Azure Staffing, LLC, filed a timely appeal from the May 19, 2017, reference 05, decision that allowed benefits and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on June 15, 2017. The claimant did not participate. The employer participated through Ms. Dara Yang, Risk Manager.

ISSUE:

The issue is whether the employer filed a timely 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 employer's address of record on May 4, 2017, and was received by employer within two to three days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was May 14, 2017. Although the notice of claim was received at the employer's place of business in a timely fashion, prior to the deadline for protest, the employer did not file a protest until May 16, 2017, which is after the due date on the notice of claim.

Azure Staffing, LLC delayed filing the protest on Tyree Millsap's claim because it was waiting for a client to supply more information, so the temporary service could make a decision to protest the claim. When the client provided additional information Azure Staffing, LLC requested on May 16, 2017, the employer filed a protest on the claim at that time electronically.

REASONING AND CONCLUSIONS OF 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 the court in that decision to be controlling on this portion of the 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 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 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 decision of the representative dated May 19, 2017, reference 05, is affirmed. Employer failed to file a timely protest. The decision of the representative shall stand and remain in full force and effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs