

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

DEALGERRON HARRIS
Claimant

APPEAL NO. 18A-UI-05122-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 03/04/18
Claimant: Respondent (2R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 23, 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 May 22, 2018. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated through Colleen McGuinty, Unemployment Benefits Administrator. Department's Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and 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 March 15, 2018, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer signed the protest and faxed it to the department on March 21, 2018. The fax transmission report indicated the fax went through. The department did not receive it. On April 18, 2018, the employer sent the protest to the department again. The department received the April 18, 2018, protest.

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. 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's protest will be accepted as timely. The error was in fax transmission. The employer's fax machine indicated the fax was sent when it was not. The employer has shown good cause for noncompliance. The protest is considered timely.

The issue of the claimant's separation from employment is remanded for determination.

DECISION:

The April 23, 2018, reference 01, decision is reversed. The employer has filed a timely protest.

The issue of the claimant's separation from employment is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs