

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**JACOB KUPERMAN**  
Claimant

**APPEAL NO. 19A-UI-04205-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CAPITAL HOMES II LLC**  
Employer

**OC: 01/20/19**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

Capital Homes II (employer) filed an appeal from the reference 02, statement of charges for the first quarter of 2019, that allowed benefits to Jacob Kuperman (claimant). After due notice was issued, a hearing was held by telephone conference call on June 18, 2019. The claimant participated personally. The employer participated by Peter Cutler, Owner. Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

The issue is whether the employer's protest is timely and whether its protest of the statement of charges is timely.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant established a claim for unemployment insurance benefits effective January 20, 2019. The claimant's notice of claim was mailed to the employer's address of record on January 28, 2019, and received by the employer within ten days. The notice of claim contained a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer thought it filed a protest between February 1 and May 20, 2019, but did not retain a copy of the completed protest form. The employer was certain the protest it filed would have been late.

On May 9, 2019, the employer was mailed a statement of charges for the first quarter of 2019. The document contained information that stated, "If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 30 days after the date of the mailing of this statement." The employer appealed the Notice of Claim and Statement of Charges on May 20, 2019.

There are issues regarding the reason for the claimant's separation from employment that have not yet been investigated or adjudicated at the claims level.

## 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.

Iowa Code section 96.7(2)a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

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 employer has not filed a 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 has 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 separation from 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).

With regard to the timeliness of the employer's appeal of the Statement of Charges, the employer did receive the Statement of Charges and file an appeal within the with the thirty-day

time period prescribed by the Iowa Employment Security Law. Consequently, its appeal of the Statement of Charges is considered timely.

**DECISION:**

The reference 02, statement of charges for the fourth quarter of 2018, is affirmed. The employer did file a timely appeal to the statement of charges but did not file a timely protest. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs