

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

FERNANDO LIAS MORALES
Claimant

APPEAL NO. 17A-UI-13202-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CYHAWK HOSPITALITY INC
Employer

OC: 11/19/17
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Cyhawk Hospitality, Inc., filed an appeal from a representative's unemployment decision dated December 15, 2017, reference 02, which held the claimant eligible to receive unemployment insurance benefits then found the employer's protest was not timely filed. After due notice was issued, a telephone conference hearing was held on January 12, 2018. Although notified, the claimant did not participate. The employer participated by Ms. Chris Mananny, Human Resource Consultant.

ISSUE:

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: a notice that the claimant had filed a claim for unemployment insurance benefits was mailed to the employer's address of record on November 22, 2017 and received by the employer within ten days. The notice of claim contained 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 8, 2017 which is after the ten day period expired.

The employer's witness had not direct knowledge of the reason for the delay in returning the protest. The only information the employer's witness has was that the delay was caused by "a computer issue". It was the witness' initial belief that the computer issue had been "on the employer's end".

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 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 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 December 15, 2017, reference 02, 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 the claimant satisfies all the conditions of eligibility.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn