

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DEONDRA Y GATES**  
Claimant

**JAM EQUITIES OF WATERLOO LLC**  
Employer

**APPEAL 19A-UI-01061-H2T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/13/19**  
**Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 31, 2019, (reference 04) representative decision that allowed benefits finding the employer had failed to file a timely notice of protest. The parties were properly notified about the hearing. A telephone hearing was held on February 21, 2019. Claimant did not participate. Employer participated through Asif Poonja, Owner and Danielle Allen, Area District Manager. Department's exhibit D-1 was admitted into the record.

**ISSUE:**

Did the employer file a timely notice of protest?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A notice of claim was mailed to the employer on January 15, 2019. 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 received the notice of claim on or before January 19 as Ms. Allen filled it out on that day and Mr. Poonja signed it on January 19. The employer did not fax in or e-mail in the notice of protest until 11:02 p.m. pacific daylight time on January 25, 2019. The notice was due by January 25 central daylight time. The employer did not submit a timely notice of protest. The employer's allegation that they faxed it earlier but it was not received by the agency is not supported by any credible evidence.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security 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 employer has not shown any good cause for failure to comply with the jurisdictional time limit or that the delay was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(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 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 January 31, 2019 (reference 04) decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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