

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LARRY L CARNEY
Claimant

APPEAL NO. 09A-UI-06674-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACP OF DELAWARE INC
Employer

OC: 03/29/09
Claimant: Respondent (2-R)

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

ACP of Delaware, Inc. filed an appeal from a representative's decision dated April 27, 2009, reference 01, which held that the protest concerning Larry Carney's separation on March 21, 2008 was not timely filed. After due notice was issued, a hearing was held by telephone on May 27, 2009. Mr. Carney participated personally. The employer participated by Kim Port, Human Resources Manager.

ISSUE:

At issue in this matter is 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: The claimant's notice of claim was mailed to the employer's address of record on April 6, 2009. It was not received until after April 16, 2009. The notice of claim contains 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 April 22, 2009, which is after the ten-day period had expired.

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 established good cause for not complying with the jurisdictional time limit. The employer did not receive the notice of claim until after the protest period had expired. The employer acted with due diligence in filing its protest within ten days of actually receiving the notice of claim. Therefore, the agency has jurisdiction regarding the separation from employment.

The administrative law judge concludes the employer's protest shall be considered timely filed. Therefore, this matter shall be remanded to Claims to adjudicate Mr. Carney's separation of March 21, 2008.

DECISION:

The decision of the representative dated April 27, 2009, reference 01, is reversed. The employer filed a timely protest to Mr. Carney's claim. This matter is remanded to Claims to adjudicate the separation from employment.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

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