

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**SCOTT R POWERS**  
Claimant

**ABODE CONSTRUCTION INC**  
Employer

**APPEAL 18A-UI-00839-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/17/17**  
**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 9, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon an untimely protest. The parties were properly notified about the hearing. A telephone hearing was held on February 12, 2018. Claimant participated. Employer participated through accounting and human resources manager Julie Carfagna. Department's Exhibit D-1 was received. Employer's Exhibit 1 was received.

**ISSUE:**

Is the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was provided to the employer in the SIDES system with an e-mail alert on December 21, 2017. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of January 2, 2018. The employer did not file a protest response until January 4, 2018, which is after the ten-day period had expired because it was on seasonal shutdown from December 22, 2017, through January 2, 2018, and the email regarding the claim was not checked and noticed until January 4, 2018.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that employer has failed to file a 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. Iowa Dep't of Job Serv.*, 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.

Employer's choice to have a shutdown and not check email during that time period was a business decision. 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). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand for a fact-finding interview. Iowa Code § 96.6(2).

**DECISION:**

The January 9, 2018, (reference 01) unemployment insurance decision is affirmed. Employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

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Decision Dated and Mailed

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