

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW THOMPSON**  
Claimant

**APPEAL NO: 12A-UI-00486-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DANS CUSTOM LANDSCAPES INC**  
Employer

**OC: 11-27-11  
Claimant: Respondent (1)**

Section 96.6(2) – Timeliness of Protest  
Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 5, 2012, reference 01, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on February 13, 2012. The claimant participated in the hearing. Dan Wiedemeier, president, and Mike Hinders, manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issue is whether the employer's protest is timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on December 8, 2011, and received by the employer within ten days. 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 did not file a protest until December 29, 2011, which is after the ten-day period had expired. The employer uses a third party who does its payroll, insurance, workers' compensation insurance, and unemployment claims. The third party received the notice of claim December 16, 2011, but did not provide it to the employer until December 29, 2011, at which time the employer filed its protest.

**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 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 failed to 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). While the employer uses a third-party company to handle its unemployment claims, the evidence shows the third party received the notice of claim prior to the due date of the protest but failed to forward it to the employer in a timely manner. Although the employer did mail the protest when it received it, the employer is ultimately responsible for the timeliness of documents sent to its representative. Consequently, the administrative law judge must conclude the employer's protest is untimely. Therefore, benefits are allowed.

**DECISION:**

The January 5, 2012, reference 01, decision is affirmed. The employer has failed to file a timely protest, and the representative's decision allowing benefits shall stand and remain in full force and effect.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/kjw