

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**TACARA C CAMPBELL**  
Claimant

**APPEAL NO. 19A-UI-02113-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**QPS EMPLOYMENT GROUP INC**  
Employer

**OC: 02/03/19**  
**Claimant: Respondent (2R)**

Iowa Code § 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed the representative's decision dated March 5, 2019, reference 02, that concluded it failed to file a timely protest regarding the claimant's separation of employment on December 15, 2018, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on March 26, 2019, pursuant to due notice. Employer participated by Mai Lor. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibit 1 was admitted into evidence.

**ISSUE:**

The issue in this matter is whether the employer's protest is timely.

**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 stated to have been sent to the employer's address of record on February 15, 2019, and received by the employer within ten days. 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 February 28, 2019, which is after the ten-day period had expired.

Employer stated that they did not receive a copy of the Notice of Claim in this matter. (Search of IWD documents did not show a copy of the Notice of Claim for employer.) Employer showed documentation that indicated employer was notified their response was due by February 28, 2019. Employer found out this information through its daily search through SIDES. Employer filed its protest on February 28, 2019.

**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 shown good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge retains jurisdiction to entertain the protest regarding the separation from employment.

The administrative law judge concludes the employer effected a timely protest within the time period prescribed by the Iowa Employment Security Law, and any delay was due to Agency error or misinformation pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the employer has effected a timely protest pursuant to Iowa Code § 96.6-2, and the administrative law judge retains 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 March 5, 2019, reference 02, is reversed. The employer has filed a timely protest, and the decision of the representative is reversed. This matter shall be remanded to the fact-finder for further determination on the separation issue.

---

Blair A. Bennett  
Administrative Law Judge

---

Decision Dated and Mailed

bab/scn