

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM T PATTON
Claimant

APPEAL NO. 18A-UI-01589-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

COLLINS MAUS LLC
Employer

OC: 01/07/18
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Collins Maus, LLC filed an appeal from a representative's unemployment insurance decision dated February 1, 2018, reference 03, which held the claimant eligible to receive unemployment insurance benefits, finding that the employer had not submitted a timely protest. After due notice was provided, a telephone hearing was held on March 1, 2018. Although duly notified, the claimant did not participate. Employer participated through Mr. Brad Neal, Executive Chef.

ISSUE:

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: a notice of claim filed on William Patton was mailed to the employer's last known address of record on January 10, 2018 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 by the initial mailing date. Because the due date for the protest fell on a weekend, the due date was automatically moved until Monday, January 22, 2018. The employer did not effect a protest until January 25, 2018, which is beyond the ten day statutory time date.

The employer was delayed in filing its protest in this matter because the owner, Fran Maus, was feeling ill with flu like symptoms and had not visited the restaurant to review the mail or perform administrative tasks for an extended period. Although Mr. Neal, the restaurant's executive chef, was present, he did not open the mail because it was not addressed to him and he was unaware of the contents.

The employer has now taken remedial action in hopes of minimizing any future timeliness issues. At the time that the notice of claim had been sent and received at the address of record, the employer had made no arrangements to have office correspondence reviewed or forwarded. The employer has established no good cause reason for late filing.

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.

This same Iowa Code Section in another portion 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 protest regarding the separation from employment.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and 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 24.35(2). The administrative law judge further concludes that the employer has failed to effect a timely protest pursuant to Iowa Code section 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 unemployment insurance decision of the representative dated February 1, 2018, reference 01, is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect. Benefits allowed, provided the claimant satisfies all other conditions of eligibility.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn