

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

RONALD L MEFFERD
Claimant

APPEAL NO. 20A-UI-01611-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NORTH IDA INVESTMENTS LLC
Employer

OC: 01/26/20
Claimant: Respondent (2R)

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated February 14, 2020, reference 03, that concluded it failed to file a timely protest regarding the claimant's separation of employment on September 30, 2019, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on March 10, 2020, pursuant to due notice. Employer participated by Stacy Brown. Claimant failed to respond to the hearing notice and did not participate.

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 mailed to the employer's address of record on January 29, 2020, 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 12, 2020, which is after the ten-day period had expired.

Employer's representative stated that employer is located in a new development where there are no mailboxes. As this is the case, all mail for employer is delivered to a P.O. Box. Employer stated that the P.O. Box is visited every Monday and Friday, and on occasional Wednesdays. Claimant stated that she picked up the Notice on February 11, 2020 and sent in her protest on February 12, 2020.

It is noted that when the protest was sent in, employer noted that they did not receive the original claim until February 11, 2020.

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.

A portion of the Iowa 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 any good cause for not complying with the jurisdictional time limit as the employer did not receive the notice in time to file a timely protest. 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 an Agency error or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the employer has therefore 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 February 14, 2020, reference 03, is reversed. The employer has filed a timely protest, and the decision of the representative shall be reversed. This matter is remanded to the fact finder for a determination of the separation issue.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/rvs