

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JACKLYN JASEK
Claimant

HOWLING DOGS INC
Employer

APPEAL 17A-UI-11136-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/17/17
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the October 18, 2017, (reference 07) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on November 17, 2017. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated by Steve Perneti, president. Employer's Exhibit 1 was received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Is the employer's protest 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 employer's address of record on September 20, 2017, and was received by employer within ten days. Mr. Perneti received the notice of claim on September 25 or 26, 2017. The notice of claim contained a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of October 2, 2017. The employer, through Mr. Perneti, drafted his response on October 1, 2017, and then his bookkeeper mailed the protest on October 6 or 7, 2017, from a post office box. Due to the Columbus Day holiday, the envelope was postmarked on October 10, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security 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 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. Based on the evidence presented, the employer failed to file a protest within the time period prescribed by Iowa Code Section § 96.6(2). In this case, the employer received the notice of claim but did not attempt to submit the response until October 6 or 7, 2017, after the final day to respond and was not postmarked until October 10, 2017. Pursuant to Iowa Admin. Code rules 871-26.2(96)(1) and 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. Messina v. Iowa Dep't of Job Serv., 341 N.W.2d 52 (Iowa 1983).

The administrative law judge is sympathetic to the employer, but based on the evidence presented, concludes that the employer's failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979). 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 October 18, 2017, (reference 07) unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn