

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHANEAL S RAMOS
Claimant

APPEAL NO. 17A-UI-04668-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CALVIN ROCKETT LLC
Employer

OC: 04/02/17
Claimant: Respondent (1)

Iowa Code Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 28, 2017, reference 04, decision that allowed benefits to Mr. Ramos and found the employer's protest to be untimely. After due notice was issued, a hearing was held by telephone on May 19, 2017. Claimant participated. The employer participated by Mr. Blake Brenner, Manager.

ISSUE:

At issue is whether the employer's protest was 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 April 6, 2017, and received by the employer in the ordinary course of deliveries of the US Mail. The notice of claim contained a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer completed the protest, but did not personally deposit the envelope containing the protest into the US Mail. The protest and other out-going mail was collected from the building where the employer is located by a private party and later, at an unspecified date, deposited with the US Postal Service for delivery. The protest was not postmarked. It was received by Iowa Workforce Development on April 21, 2017, which is beyond the ten-day period. The employer is unsure when the envelope that was entrusted to a third party for deposit with the US Postal Service was deposited with the US Postal Service.

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 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 employer entrusted the envelope incasing the protest to a third party for later deposit with the US Postal Service. The protest was not received until after the 10-day statutory time limit. 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 decision of the representative dated April 28, 2017, reference 04, 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.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs