

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

KELLI L YOUTZY
Claimant

APPEAL NO: 18A-UI-06893-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

5 * WIRELESS LLC
Employer

OC: 08/06/17
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer, 5 * Wireless LLC., filed an appeal from the June 20, 2018, (reference 04) unemployment insurance decision found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on July 12, 2018. The claimant participated personally. The employer participated by Dana Payne, vice president.

Employer Exhibits 1 and 2 were received. The administrative law judge took official notice of the administrative record, but the Notice of Claim and protest were unavailable. 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.

NOTE TO EMPLOYER: To become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>.

ISSUES:

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 May 25, 2018.

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 June 4, 2018 (Employer Exhibit 2). The employer did not file a protest response until June 14, 2018 (Employer Exhibit 2).

The employer's corporate office is located in Elkhorn, Nebraska and run by Ms. Payne and her husband. They check the employer PO Box approximately three times a week and checked the mailbox on May 26, 2018 before leaving for vacation on May 28, 2018. (Mail was unavailable on May 27, 2018 and May 28, 2018 due to it being a Sunday and a holiday.) Mr. and Mrs. Payne then went on vacation from May 28, 2018 through June 11, 2018. On June 12, 2018, they attended a funeral. On June 13, 2018, they retrieved mail from the PO Box and

submitted a claim protest via fax on June 14, 2018, 10 days after the due date to respond to the notice of claim.

The employer reported that the business was still in operation during Payne's absence from the office but does not have anyone check the PO Box or coordinate for anyone review mail for potentially urgent matters while Mr. or Mrs. Payne is away.

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 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.

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 did not check its mail for a period of over thirteen days, which coincided with the mailing of the notice of claim and due date to respond. The employer's choice to not to designate someone to check employer mail during Mr. and Mrs. Payne's absence from the office was a business decision. Consequently, the employer filed its protest to the claim 10 days after the due date (Employer Exhibit 2).

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 June 20, 2018, (reference 04) 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/rvs