

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

HARRY J MYERS

Claimant

GARY THOMPSON OIL CO

Employer

APPEAL NO. 22A-UI-05152-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20

Claimant: Respondent (2R)

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated February 16, 2022, reference 02, that concluded it failed to file a timely protest regarding the claimant's separation of employment on May 5, 2019, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on April 6, 2022, pursuant to due notice. Claimant participated personally. Employer participated by Tom Wiersen. Employer's Exhibits 1-3 were admitted into evidence.

ISSUES:

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 April 6, 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 September 8, 2021, which is after the ten-day period had expired.

Employer's Exhibit 3 indicates employer timely faxed in a protest in this matter on April 8, 2020 to the IWD protest fax line. This protest was successfully completed.

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 they complied with the jurisdictional time limit. Therefore, the administrative law judge retains jurisdiction to entertain the protest regarding the separation from employment.

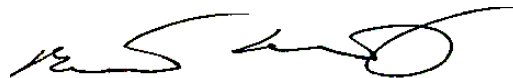
The administrative law judge concludes the employer effected a timely protest within the time period prescribed by the Iowa Employment Security Law. The administrative law judge further concludes that the employer effected a timely protest pursuant to Iowa Code § 96.6-2, and the administrative law judge 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).

This matter will be remanded to the fact finder for proceedings on the separation issue.

DECISION:

The decision of the representative dated February 16, 2022, reference 02, is reversed. The employer filed a timely protest.

This matter will be remanded to the fact finder for proceedings on the separation issue.



Blair A. Bennett
Administrative Law Judge

April 12, 2022
Decision Dated and Mailed

bab/scn