KAYLA J WILKES Claimant **HEALTHCARE HOSPITALITY GROUP LLC** Employer	**APPEAL 16A-UI-10983-CL-T** **ADMINISTRATIVE LAW JUDGE DECISION** **OC: 09/04/16** **Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the September 30, 2016, (reference 02) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on October 25, 2016. The claimant did not participate. The employer participated by human resource administrator Bridget Downie and vice president of operations Michael Mills. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on September 8, 2016, and was received by employer on September 14, 2016. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. When employer originally received the notice of claim, it could not locate the claimant's employment records. The human resource administrator concluded the agency made an administrative error and went on vacation. When the human resource administrator returned from vacation, she filed a protest stating the employer could not locate the claimant's records. The employer did not file a protest until September 21, 2016, which is after the ten-day period had expired. Later, after the agency provided employer with more information regarding the claimant, the employer located the claimant's records. Employer resubmitted a protest with updated information on September 27, 2016.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest 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.

In this case, the employer could not locate the claimant's employment records and waited to respond to the notice of claim until after the deadline expired, believing the agency had made a clerical error. Employer's explanation for being unable to initially locate the claimant's employment records is understandable. However, this does not excuse employer's failure to respond to the notice of claim until *after* the time to protest the claim had expired. The delay was not due to any *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-4.35(2). No other good cause reason has been established for the delay. The administrative law judge further concludes that the employer has failed to timely protest pursuant to Iowa Code § 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

DECISION:

The September 30, 2016, (reference 02) decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

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Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

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Decision Dated and Mailed

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