

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AARON J RIEPE
Claimant

SCOTT GRAHAM
Employer

APPEAL 16A-UI-01667-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/03/16
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the February 5, 2016, (reference 02) unemployment insurance decision that allowed benefits based upon on an untimely protest. The parties were properly notified about the hearing. A telephone hearing was held on February 29, 2016. Claimant did not participate. Employer participated personally. Department's Exhibit D-1 was received.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on January 14, 2016, and was received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of January 25, 2016. The employer did not file a protest response until January 29, 2016, which is after the ten-day period had expired because he was out of the country visiting his wife from December 28, 2015, through January 28, 2016. Employer did not ask anyone to review his mail for him while he was gone.

REASONING AND CONCLUSIONS OF LAW:

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.

Employer is a sole proprietor. Employer chose not to ask anyone to review his business mail while he was out of the country. While employer's decision as a sole proprietor was understandable, it was ultimately a business decision. Employer's delay in filing the protest 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. 871-24.35(2). Thus, employer failed to establish a good reason for the delay as defined by the law.

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 February 5, 2016, (reference 02) unemployment insurance decision is affirmed. Employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.

Christine A. Louis
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Decision Dated and Mailed

cal/pjs