

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RICKY L AMUNDSON
Claimant

APPEAL 17A-UI-03565-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-1 SEPTIC SOLUTIONS
Employer

**OC: 02/19/17
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the March 27, 2017, (reference 02) unemployment insurance decision that allowed benefits based upon the employer's failure to file its protest in a timely manner. The parties were properly notified of the hearing. A telephone hearing was held on April 27, 2017. The claimant did not participate. The employer participated through Cory Nichols. Department's Exhibit D-1 was received into evidence.

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 February 22, 2017. The employer could not recall the exact date the notice was received, but testified mail from Des Moines usually arrives within two to three business days and there was no reason to believe there was a delay in the mail during this time. 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 March 6, 2017. The form advises any protest must be postmarked, faxed or returned not later than March 6, 2017. The employer did not file a protest response until March 22, 2017, which is after the ten-day period had expired. The employer explained he did not see the notice of claim until approximately March 17, 2017. When Nichols saw the notice of claim he called the claimant and offered him work for the season. Claimant said he would think about it and get back to him. When Nichols did not hear from claimant he submitted the employer's protest on March 22, 2017.

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.

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.

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. 871-24.35(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).

The employer indicated during the hearing that it offered claimant work and that he refused that offer of work. If the employer believes this may be an issue, they are encouraged to contact their local Iowa Workforce Development Office with that information.

DECISION:

The March 27, 2017, (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.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs