

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE M DICKSON

Claimant

APPEAL NO. 17A-UI-02460-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTT COUNTY FAMILY YMCA

Employer

OC: 01/29/17

Claimant: Respondent (4)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the February 24, 2017, reference 02, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on March 29, 2017. The claimant did not participate. The employer participated through Amy Goodwin, Director of Human Resources. Department's Exhibit D-1 was received into evidence. The employer offered and Exhibit 1 was received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and 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 February 10, 2017, and received by the employer within ten days. 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. The employer faxed a protest to the correct number on February 15, 2017. The transmission was good but the department did not record receipt of the protest. When the employer learned the department did not receive the protest, it resent the protest on February 22, 2017, which is after the ten-day period had expired.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the employer's protest is timely. The administrative law judge determines it is.

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 employer has proven it received the protest and filed it within the time period allowed by law. Therefore, the protest shall be considered timely.

DECISION:

The February 24, 2017, reference 02, decision is modified in favor of the appellant. The employer's protest was timely. The claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs