

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRENNA K SPEARS
Claimant

APPEAL 17A-UI-08843-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

S T L CARE COMPANY
Employer

OC: 08/06/17
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

S T L Care Company (employer) filed an appeal from the August 23, 2017, reference 03, unemployment insurance decision that found its protest untimely and allowed Brenna K. Spears (claimant) to receive benefits. After notice was issued, a hearing was held by telephone conference call on September 18, 2017. However, neither party registered for the hearing. The administrative law judge discovered that morning that the notice had not been sent to the person and address identified as the employer's representative. The hearing was rescheduled for September 28, 2017 and new notices were mailed to the parties and the employer's representative. The claimant did not respond to the hearing notice and did not participate. The employer participated through Human Resources Director Janice L. Otting. 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: The claimant's notice of claim was mailed to employer's address of record on August 8, 2017. 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 August 18, 2017.

Human Resources Director Janice L. Otting completes the protests on the employer's behalf. She was out of the office August 14 through August 18. The notice was mailed to another building and delivered by courier to her office. Neither Otting nor the building where the mail is delivered performs job duties over the weekend. The Notice of Claim was waiting in Otting's mailbox when she returned to work at 8:00 a.m. on Monday, August 21, 2017 which is the day she filed the employer's protest.

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).

Based on the facts presented, it is reasonable to conclude the employer received the Notice of Claim at its address of record prior to or on Friday, August 18, 2017 as it was waiting for Otting at 8:00 a.m. on Monday, August 21, 2017 and would not have been delivered to her over the weekend. The employer's choice to wait to respond to the Notice of Claim while the business operations continued during Otting's absence was a business decision. 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 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 August 23, 2017, reference 03, unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn