IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

RAUL S MINIX-ESPINOZA Claimant	**APPEAL NO. 08A-UI-11217-HT**
	ADMINISTRATIVE LAW JUDGE DECISION
WEAVER ENTERPRISES LTD Employer	
	OC: 11/2/08 R: 04 **Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer, Weaver Enterprises, filed an appeal from a decision dated November 24, 2008, reference 02. The decision found the employer's protest was not timely. After due notice was issued, a hearing was held by telephone conference call on December 15, 2008. Neither the claimant nor the employer provided telephone numbers where they could be contacted and no hearing was held. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the protest is timely.

FINDINGS OF FACT:

Claimant's notice of claim was mailed to employer's address of record on November 7, 2008, and received by 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. Employer did not file a protest until November 19, 2008, which is after the ten-day period had expired. No good cause reason has been established for the delay.

The record was closed at 10:12 a.m. At 10:25 a.m. the appellant called and requested to participate. The appellant received the hearing notice prior to the December 15, 2008 hearing. The instructions inform the parties that if the party does not contact the Appeals Section and provide the phone number at which the party can be contacted for the hearing, the party will not be called for the hearing. The first time the appellant directly contacted the Appeals Section was on December 15, 2008, after the scheduled start time for the hearing. The appellant had not read all the information on the hearing notice, and had assumed that the Appeals Section would initiate the telephone contact even without a response to the hearing notice.

REASONING AND CONCLUSIONS OF 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.

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. *The delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 4.35(2).* 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. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979) and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The next issue is whether the record should be reopened. The judge concludes it should not.

871 IAC 26.14(7) provides:

> (7) If a party has not responded to a notice of telephone hearing by providing the appeals section with the names and telephone numbers of its witnesses by the scheduled time of the hearing, the presiding officer may proceed with the hearing.
>
> a. If an absent party responds to the hearing notice while the hearing is in progress, the presiding officer shall pause to admit the party, summarize the hearing to that point, administer the oath, and resume the hearing.
>
> b. If a party responds to the notice of hearing after the record has been closed and any party which has participated is no longer on the telephone line, the presiding officer shall not take the evidence of the late party. Instead, the presiding officer shall inquire as to why the party was late in responding to the notice of hearing. For good cause shown, the presiding officer shall reopen the record and cause further notice of hearing to be issued to all parties of record. The record shall not be reopened if the presiding officer does not find good cause for the party's late response to the notice of hearing.
>
> c. Failure to read or follow the instructions on the notice of hearing shall not constitute good cause for reopening the record.

At issue is a request to reopen the record made after the hearing had concluded.

The first time the appellant called the Appeals Section for the December 15, 2008 hearing was after the hearing had been closed. Although the appellant may have intended to participate in the hearing, the appellant failed to read or follow the hearing notice instructions and did not contact the Appeals Section as directed prior to the hearing. The rule specifically states that failure to read or follow the instructions on the hearing notice does not constitute good cause to reopen the hearing. The appellant did not establish good cause to reopen the hearing. Therefore, the appellant’s request to reopen the hearing is denied.

DECISION:

The representative's decision dated November 24, 2008, reference 02, 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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Bonny G. Hendricksmeyer
Administrative Law Judge

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Decision Dated and Mailed

bgh/css