

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RODNEY D CORNELISON**

Claimant

**APPEAL NO: 11A-UI-15105-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BYBEE & DAVIS FUNERAL HOME INC**

Employer

**OC: 09/25/11**

**Claimant: Respondent (1)**

Section 96.5-1 – Voluntary Quit

Section 96.6-2 – Timeliness of Protest

871 IAC 24.8(3) – Employer Completion of Protest

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated November 15, 2011, reference 03, that held it failed to file a timely protest regarding claimant's employment separation on July 25, 2011, and benefits are allowed. A telephone hearing was held on December 15, 2011. The claimant participated. Ray Bertrand, President, participated for employer. Employer Exhibit One was received as evidence.

**ISSUE:**

Whether the employer filed a timely protest.

**FINDINGS OF FACT:**

The administrative law judge having heard the testimony of the witness, and having considered the evidence in the record, finds: The claimant filed an unemployment claim effective September 25, 2011, and the department mailed a notice of claim to the employer on October 3. The notice warns an employer that the protest must be faxed or postmarked by the due date of October 13. The employer did not submit a protest at that time. The employer did not submit a protest at that time, because it was under a mistaken belief that claimant was a contract worker. The employer bookkeeper had reported paying taxable wages to the department for claimant from the 4th quarter of 2010 thru the second quarter of 2011.

The department mailed a statement of charges to the employer regarding co-worker Johnson's unemployment claim on November 9 (See Appeal #11A-UI-15104-ST). When the employer inquired about claimant's claim, it learned he also was receiving benefits. The employer faxed an appeal and returned the notice of claim with a protest on November 10 stating "this is a bunch of crap ... this person just quit showing up for work". The department issued the decision on November 15 allowing benefits based on the employer late protest, and it appealed.

**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.

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 § 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 administrative law judge concludes that the employer failed to file a timely protest. Since the protest is untimely, the ALJ lacks jurisdiction to rule on the employment separation issue.

The employer has failed to establish a good legal cause for the two-month protest delay. The employer had been reporting claimant taxable wages throughout the course of his employment, and a check with the bookkeeper would have resolved this issue.

**DECISION:**

The department decision dated November 15, 2011, reference 03, is affirmed. The employer failed to file a timely protest, and the department decision remains in force and effect. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs