

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TUCKER J SCHNEIDER
Claimant

APPEAL 19A-UI-02777-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**ENERGY DANCE COMPANY AND
APPAREL**
Employer

OC: 02/24/19
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On April 2, 2019, employer filed an appeal from the March 29, 2019, (reference 02) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on April 19, 2019. The claimant did not participate. The employer participated through owner Alexa Kent-Langenwalter. Robert Kent was also present on behalf of the employer, but did not participate. 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 March 4, 2019, and was delivered to the employer's post office box within ten days, on or around March 14, 2019. 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 14, 2019. Kent-Langenwalter explained that March is competition season in her industry and she travels frequently. She further noted that there were several days of inclement weather. As such, things were very chaotic and she failed to check her mail until March 24, 2019, when she had time to do so. The employer does have other employees, but Kent-Langenwalter made the business decision that she would be the only one with access to the post office box. The employer did not file a protest response until March 25, 2019, which is after the ten-day period had expired.

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.

Here, the delay in filing was because the employer failed to check its mail within a reasonable time frame. While it is understandable that things may have been busy and chaotic during the time period in question, the delay in filing 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).

DECISION:

The March 29, 2019, (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