

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHANIA J WILLIAMS
Claimant

APPEAL NO. 17A-UI-02242-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

A LITTLE ON THE SIDE LLC
Employer

OC: 02/05/17
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

A Little on the Side, LLC, the employer, filed a timely appeal from the February 22, 2017, reference 02, decision that allowed benefits to the claimant and found the employer's protest untimely. After due notice was issued, a telephone hearing was held on March 22, 2017. Although duly notified, the claimant did not participate. The employer participated by Ms. Sheryl Walters, General Manager.

ISSUE:

The issue is whether the employer's protest was timely.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: The claimant's notice of claim filed was mailed to the employer's address of record on February 7, 2017 and received by the employer within ten days. The notice of claim contained a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until Monday, February 20, 2017, which is after the ten-day period had expired. The notice of claim filed had been mailed to the employer's address of record, the owner's residence, although however the company owner was out of town approximately ten days on vacation and had made no arrangements to have correspondence forwarded or have it handled by any other individual during the owner's absence.

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 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 protest regarding the separation from employment.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and 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 24.35(2). The administrative law judge further concludes that the employer has failed to effect a timely protest pursuant to Iowa Code section 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).

DECISION:

The representative's dated February 22, 2017, reference 02, is affirmed. The employer failed to file a timely protest and the decision of the representative shall stand and remain in full force and effect. Benefits allowed providing Shania J. Williams satisfies all other conditions of eligibility.

Terry Nice
Administrative Law Judge

Decision Dated and Mailed

scn/scn