

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SABRINA M WILCOX
Claimant

REICKHOFF FAMILY BUSINESSES INC
Employer

APPEAL 16A-UI-12123-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/11/16
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the November 2, 2016, (reference 05) 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 November 30, 2016. The claimant registered for the hearing but was unavailable when called and did not participate. The employer participated by William Rieckhoff, owner. Department's Exhibit D-1 and D-2 were received. 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 the employer's address of record on September 20, 2016, and was received by employer within ten days. The notice of claim contained a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of September 30, 2016. The employer did not file a protest response until October 28, 2016, which is after the ten-day period had expired. Mr. Rieckhoff solely handles the mail for his business, and checks the mail daily, and usually opens company mail every two to three days. However, Mr. Rieckhoff was out of town between September 16 and 22, 2016 sending his daughter to college. When he arrived back to town, his mail was not opened, and the employer began mandatory flood evacuations which were from September 25 and 29 or 30, 2016. This period coincided with the appeal period which ended September 30, 2016.

Mr. Rieckhoff believed that he opened the notice of claim upon return to the office around October 10 or 11, and acknowledged due to other business matters, he did not complete the claim protest/response until October 25, 2016 (Department exhibit D-1). It was received by the Agency on October 28, 2016 (Department exhibit D-1).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code Section § 96.6(2). The employer was mailed a copy of the notice of claim in advance of the flooding evacuation, which coincided with the appeal period ending September 30, 2016. The employer received the notice of claim during the period of appeal but did not open it until October 10 or 11, 2016, even though the employer returned to business post flooding evacuations around September 29 or 30, 2016. Then the employer waited almost two weeks after opening the claim on October 10 or 11, 2016 to generate a response to the notice of claim. Even if the administrative law judge was to extend the deadline to appeal due to the employer's mandatory evacuations for flooding from September 25 to 30, 2016, the employer had notice of the claim effective October 10 or 11, 2016 and did not immediately respond, even though the final day had lapsed.

The administrative law judge is sympathetic to the juggling of business needs the employer may have had between September 20, 2016 (when the claim was mailed) and October 25, 2016 (when the claim was completed by the employer), but based on the evidence presented, concludes that the employer's failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871

IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand for a fact-finding interview. Iowa Code § 96.6(2).

DECISION:

The November 2, 2016, (reference 05) unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs