

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER B TRESCH
Claimant

APPEAL NO. 09A-UI-01595-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MICHAEL J WALTER
RETLAW'S RIVERSIDE
Employer

OC: 12-21-08 R: 02
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code Chapter 95 – Requalification

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 26, 2009, reference 01, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on February 20, 2009. The claimant did participate. The employer did participate through Jacqueline S. Miller, Manager. Department's Exhibit D-1 was received.

ISSUE:

The issue is whether employer's protest is 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 December 23, 2008. The employer did protest on January 16, 2009. The notice of claim form was received by the employer on December 24 and given to Ms. Miller's whose responsibility it was to deal with it, on December 26. Ms. Miller did not attempt to fax the notice of protest form into Iowa Workforce Development until January 3, 2009, **after** the deadline for a timely protest had already passed. When the fax would not go through on January 3 she then mailed the notice of protest into Iowa Workforce Development on January 6, 2009. The notice of protest she mailed was returned to her by the U.S. Post office as it was incorrectly addressed. Ms. Miller then again mailed the notice of protest on January 16, 2009. Ms. Miller did not attempt to file a notice of protest between December 26 when she received it and January 2, 2009 when it was due because she set it aside and forgot about it during the holidays. Ms. Miller had ample opportunity to file a timely protest but did not do so.

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 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 employer had the opportunity to file a timely protest before she incorrectly mailed the notice of protest form. The notice of protest that was incorrectly mailed was due to the employer's error and was late when it was originally mailed. 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). Benefits are allowed and the employer's account will be charged.

DECISION:

The January 26, 2009, reference 01, decision 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. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs