

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**TRISTAN J OBRIEN**  
Claimant

**AMAZINGLY CLEAN BY JAY GEGNER LLC**  
Employer

**APPEAL NO. 22A-UI-06586-B2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/01/21  
Claimant: Respondent (2R)**

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Iowa Code § 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed the representative's decision dated March 9, 2022, reference 02, that concluded it failed to file a timely protest regarding the claimant's separation of employment on August 3, 2021, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on April 25, 2022, pursuant to due notice. Employer participated by Warren Gegner. Claimant failed to respond to the hearing notice and did not participate. The ALJ took notice of the administrative file.

**ISSUES:**

Whether the employer's protest is timely?

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on August 5, 2021, and received by the employer within ten days. The notice of claim contains 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 August 17, 2021, which is after the ten-day period had expired. The date of the effect of the protest was determined by the stamped date from IWD that showed a date of August 17, 2021.

Employer gave testimony that their CPA completed and faxed in the protest on August 16, 2021. The CPA told the employer that the fax was successfully received on that date as they'd received notice of the same.

A look at the protest document received by IWD indicates that document had been signed by employer on August 16, 2021. The line at the top of the fax that indicates the date and time of a successful fax being sent is not legible.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 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.

A portion of the Iowa 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).

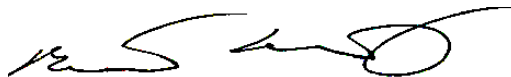
The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has shown through testimony that employer actually did comply with the jurisdictional time limit. AS the stamp of the receipt of the protest document is done by hand, and was done on the day after the protest was due, has not been shown that the fax was received on August 16, 2021 and not stamped until the next day. Absent further proof, the protest is deemed timely. Therefore, the administrative law judge retains jurisdiction to entertain a protest regarding the separation from employment.

The administrative law judge concludes the employer effected a timely protest within the time period prescribed by the Iowa Employment Security Law. The representative's decision is reversed.

**DECISION:**

The decision of the representative dated March 9, 2022, reference 02, is reversed. The employer has filed a timely protest.

This matter will be remanded to the fact finder for a determination of the separation issue.



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Blair A. Bennett  
Administrative Law Judge

May 3, 2022  
Decision Dated and Mailed

bab/scn