

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ARTHUR J BLEYENBERG

Claimant

FAMILY TABLE OF SIOUX CENTER LTD

Employer

APPEAL NO: 13A-UI-10998-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/18/13

Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed a department decision dated September 18, 2013, reference 01, that held it failed to file a timely protest regarding claimant's employment separation on March 11, 2013, and benefits are allowed. A telephone hearing was held on October 21, 2013. The claimant did not participate. Kevin King, Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant filed an unemployment claim effective August 18, 2013. The department mailed a notice of claim to the employer's address of record on August 20 with a protest due date of August 30, 2013. The employer submitted a faxed protest to the department on September 16, 2013.

Employer manager King failed to note its fax machine was unplugged and not working when he attempted to fax the protest. He did not discover this problem until September 16 when the protest was successfully sent to the department.

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.

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.

The administrative law judge concludes that the employer failed to file a timely protest. While the human transmission error is understandable, it is not recognized as a good cause for the delay.

DECISION:

The department decision dated September 18, 2013, reference 01, is affirmed. The employer failed to file a timely protest, and the department decision remains in force and effect.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs