

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

JAMES L BUTLER

Claimant

APPEAL NO. 23A-UI-01956-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CATHOLIC HEALTH INITIATIVES

Employer

OC: 12/18/22

Claimant: Respondent (1)

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated February 13, 2023, (reference 03) that concluded it failed to file a timely protest regarding the claimant's separation of employment on December 21, 2022, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on March 14, 2023, pursuant to due notice. Claimant participated personally. Employer participated by Hannah Lyons and Sean Helenthal. Employer's Exhibit 1 was admitted into evidence.

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 December 23, 2022, 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 February 10, 2023, which is after the ten-day period had expired.

Employer submitted exhibit 1 that showed employer created a SIDES protest on January 3, 2023. The same exhibit showed that the protest was submitted on February 9, 2023. Employer stated that they created the protest and forwarded it to a third party that is responsible for submission of the protests. Employer believed that they had done all that they could to submit a timely protest. They blamed a faulty computer network somewhere in the system – either with Equifax, or the third party to which the document is submitted or IWD – for the untimely submission of the protest.

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.

When a protest is received, the rules require that Workforce Development mail to the parties notice of a fact finding conference, that such a conference be held, and then that a determination be made regarding the protest. Iowa Admin. Code r. 871 - 24.9. Regular proceeding by the agency would have meant that the protest would be retained, a protest would be docketed, a fact finding interview would be scheduled and held, and a decision would be issued. None of this occurred before the employer's protest was received on February 10, 2023. Had a protest been received prior to January 3, 2023, the regular process should have been triggered, but it was not. "The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular". Iowa Code §622.56; accord *City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982). Thus, there is a presumption, from Workforce Development having no record of a protest prior to February 10, 2023, that no protest was received by Workforce. This is not an absolute presumption, but is instead a presumption that may be overcome with sufficiently probative evidence. Here the Equifax representatives offered no additional evidence, but simply guessed at where the problem may have occurred.

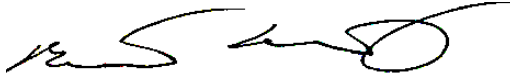
In looking at protest matters, a judge looks to a portion of the Iowa Code section dealing with timeliness of an appeal from a representative's decision that states such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an 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 or submitted through the SIDES system. 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 Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the employer has failed to effect a 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).

DECISION:

The decision of the representative dated February 13, 2023, (reference 03) is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.



Blair Bennett| Administrative Law Judge II
Iowa Department of Inspections & Appeals

March 15, 2023
Decision Dated and Mailed

bab/mh

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday. *There is no filing fee to file an appeal with the Employment Appeal Board.*

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may file a petition for judicial review in district court.

2. If you do not file an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at www.iowacourts.gov/efile. *There may be a filing fee to file the petition in District Court.*

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal. *No hay tarifa de presentación para presentar una apelación ante la Junta de Apelación de Empleo.*

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si no presenta una apelación de la decisión del juez ante la Junta de Apelación de Empleo dentro de los quince (15) días, la decisión se convierte en una acción final de la agencia y tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días. Puede encontrar información adicional sobre cómo presentar una petición en www.iowacourts.gov/efile. *Puede haber una tarifa de presentación para presentar la petición en el Tribunal de Distrito.*

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.