

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DIANE A DRIEVOLD**  
Claimant

**CAN SHED LLC**  
Employer

**APPEAL NO: 13A-UI-01809-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 10/28/12  
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest  
Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated February 15, 2013, reference 01, that held it failed to file a timely protest regarding claimant's employment separation on November 1, 2012, and benefits are allowed. A telephone hearing was held on March 13, 2013. The claimant did not participate. Julie Willard, HR Representative, 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 October 28, 2012. The department mailed a notice of claim to the employer's address of record on November 2 with a protest due date of November 13, 2012. The employer signed a protest to the claim on November 5. The employer attempted to fax it at that time to the department but it did not receive an acknowledgement of a successful transaction.

The department issued a statement of charges to the employer dated February 8, 2013. It informed the employer its tax account was being charged \$1,888.00 benefits for the claimant's UI claim for the fourth quarter of 2012. The employer submitted a faxed protest of the notice of claim to the department (as signed on November 5) on February 12. The department received this faxed 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.

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. The employer is obligated to successfully submit a protest to the department whether by fax or mail. The employer does not have evidence the November 5 transmission was successful and the department has no record that it was. More than three months passed without a protest that is well beyond the allowable period to accept it as timely.

**DECISION:**

The department decision dated February 15, 2013, reference 01, is affirmed. The employer failed to file a timely protest, and the department decision remains in force and effect.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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