

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SERGIO L MALDONADO
Claimant

DEAN HANSEN CONSTRUCTION LLC
Employer

APPEAL 21A-UI-18648-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/27/20
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

On August 25, 2021, Dean Hansen Construction, LLC (employer) filed an appeal from the August 19, 2021, reference 01, unemployment insurance decision that found the protest untimely and allowed Sergio L. Maldonado (claimant) to receive benefits. After due notice was issued, a hearing was held by telephone conference call on November 2, 2021. The claimant did not register a number to participate. The employer participated through VP Manager, Michael Hansen. The administrative law judge took official notice of the administrative record, including the notice of claim and protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant separated from employment in June, 2020 and filed a claim for benefits effective December 27, 2020.

The notice of claim was mailed to employer's address of record on December 27, 2020, and was received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of January 8, 2021. The employer did not file a protest response until February 5, 2021, which is after the ten-day period had expired because Michael Hansen and his father Dean Hansen both check the mail and Dean Hansen had put the notice of claim in a place where Michael Hansen did not see it so he could protest it in a timely manner. As soon as Michael Hansen found the notice of claim he faxed the employer's protest into Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has failed to file protest response within the time period prescribed by the Iowa Employment Security 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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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. Employer's choice to put the notice of claim in a place where it could not be seen so it could be timely protested does not excuse the untimeliness. The delay was not due to any Agency error or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). No other good cause reason has been established for the delay. As the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d

877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

DECISION:

The August 19, 2021, reference 01, unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.

A handwritten signature in cursive script that reads "Carly Smith". The signature is written in black ink on a white background.

Carly Smith
Administrative Law Judge

November 23, 2021
Decision Dated and Mailed

cs/ol