

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NATHAN W SILBERSTEIN
Claimant

APPEAL NO. 08A-UI-10372-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**AVENTURE STAFFING
& PROFESSIONAL SERVICES LLC**
Employer

**OC: 10-05-08 R: 01
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 28, 2008, reference 03, decision that allowed benefits and found the employer's notice of protest untimely. After due notice was issued, a hearing was held on December 2, 2008. The claimant did not participate. The employer did participate through Robert Hardy, Human Resources Assistant. Department's Exhibit D-1 was received. Employer's Exhibit One was entered and received into the record.

ISSUE:

Did the employer file a timely notice of protest?

FINDINGS OF FACT:

Having reviewed the testimony and all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on October 8, 2008, and received by employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. Employer did not file a protest until October 23, 2008, which is after the ten-day period had expired. The employer alleges that their notice of protest was sent in on October 20, 2008. While the employer submitted paperwork showing that a fax was sent to Iowa Workforce Development on October 20, 2008, nothing in that paperwork confirms that the document faxed was the notice of protest the agency has. The agency's copy of the employer's notice of protest clearly indicates that it was received from the employer's fax machine (telephone number 712-277-1512) on October 23, 2008 at 16:52. The employer has not established that their notice of protest was timely filed.

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 employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. *The delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 4.35(2)*. The administrative law judge further concludes that the employer has failed to 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). The employer's notice of protest was faxed in on October 23, 2008.

DECISION:

The October 28, 2008, reference 03, decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw