

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

ANDREW YODER
Claimant

APPEAL NO. 15A-UI-10562-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PARCO LTD
Employer

OC: 08/30/15
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Parco Ltd. filed an appeal from a representative's decision dated September 18, 2015, reference 04, that allowed benefits and found the employer's protest to be untimely. After due notice was provided, a hearing was held by telephone on October 5, 2015. Although duly notified, the claimant did not participate. The employer participated by Ms. Kari Krogman, Office Manager and Ms. Kristi Penner, Payroll Clerk.

ISSUE:

At issue in this matter is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having reviewed the evidence in the record, finds that: A notice of claim on the claim of Andrew Yoder was electronically transmitted to the employer's electronic address of record on September 3, 2015, and received by the employer the following day. The notice of claim contained a warning that any protest must be postmarked, faxed or electronically returned not later than ten days from the initial date that the notice of claim was transmitted to the employer. The employer did not file a protest until September 15, 2015, which is after the ten-day statutory period had expired. Because the due date for the protest fell on September 13, a Sunday, the due date was moved until Monday, September 14, 2015. The employer submitted the protest one day late because Ms. Krogman, the office manager, was away from work and other staff members had necessary payroll work to complete over the weekend preceding the protest due date. The protest was submitted electronically on the morning of September 15, 2015.

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 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 871 IAC 24.35(2). The administrative law judge further concludes that the employer has failed to effect a timely protest pursuant to Iowa Code section 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 September 18, 2015, reference 04, is affirmed. The employer has failed to file a timely protest, and the decision of the representative remains in effect. Benefits are allowed, provided Andrew Yoder satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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