

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE N DICUS

Claimant

APPEAL NO: 17A-UI-06837-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TRIPLE CROWN ENTERPRISES INC

Employer

OC: 05/28/17

Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Triple Crown Enterprises, Inc., the employer, filed a timely appeal from the June 28, 2017, reference 03, decision that allowed benefits to the claimant and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on July 21, 2017. The claimant did not participate. The employer participated by Mr. Corey Bluml, company owner. Department's Exhibit D-1 was received into the hearing record.

ISSUE:

The issue is whether the employer filed a timely protest on the claim of Kyle N. Dicus.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on June 5, 2017, and was received by employer within ten days. The notice of claim contained a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial *mailing* date. The employer had received the notice of claim filed by delivery by the U.S. Postal Service on June 15, 2017, the due date for filing a protest on the claim. Because Mr. Bluml opened the document late in the day and he believed it was too late to have the protest postmarked by U.S. Postal Service, he elected to protest the claim via e-mail, but elected to do so after the close of business that day. The e-mail protest was received by Iowa Workforce Development on June 16, 2017, which is after the 10-day period had expired. The notice of claim filed had been sent to the company at PO Box 865, Carroll, Iowa 51401, the address of record that was on file for the company at the time that the notice of claim was sent to the employer.

The employer had moved from that address approximately two weeks before but had not changed the address of record with Iowa Workforce Development. The employer had notified the U.S. Postal Service of an address change. The U.S. Postal Service had forwarded the notice of claim filed to the employer's new address delivering it to the company at 215 Applewood Drive, Carroll, Iowa 51401, the new company address given to the U.S. Postal Service by Mr. Bluml. (The administrative law judge notes that PO Box 865, Carroll, Iowa

51401 continues to be the employer's address of record on file with Iowa Workforce Development and has not been changed by the employer as of the date of hearing.)

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.

Iowa Admin. Code r. 871-24.35(1) provides:

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

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- a. If transmitted via the United States postal service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
- b. If transmitted by any means other than the United States postal service on the date it is received by the division.

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. The notice of claim filed was mailed to the employer's address of record. Although the employer had moved to a different address, the employer did not effectuate a change of address with Iowa Workforce Development prior to the time that the notice of claim had been sent. Although the employer did not reside at the address of record the notice of claim was mailed to, the employer had entered a change of address with the U.S. Postal Service. Because of the delay was reasonably associated with the forwarding of mail, the employer did not receive the notice of claim filed until June 15, 2017, the date that it was due to be postmarked or received by Iowa Workforce Development. The employer elected

to file its protest electronically via e-mail late in the day on June 15, 2017. Because the electronic transmission was not sent prior to the close of business that day, the date that it was received by the agency was the following day, June 16, 2017, beyond the 10-day statutory time limit.

Although sympathetic to the employer's situation, the administrative law judge concludes that the employer 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 action of the United States Postal Service pursuant to 871 IAC 4.35(2). The administrative law judge further concludes that the employer 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).

DECISION:

The June 28, 2017, reference 03, decision 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.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs