

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KHALIL A YAHYA**  
Claimant

**APPEAL NO. 17A-UI-00072-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MID AMERICA RECYCLING**  
Employer

**OC: 11/27/16**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 28, 2016, reference 08, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on January 26, 2017. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated through Eric Bryan, Controller, and Dave Gunsolley, Safety and Production Manager. Department's Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the employer filed a timely protest.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on December 2, 2016, and received by the 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. The notice of claim indicates that the protest mail be sent by mail. The address for mailing is 1000 East Grand Avenue, Des Moines, Iowa, 50319, and listed in bold on the back of the notice of claim. The employer completed the protest and mailed it to P.O. Box 10321, Des Moines, Iowa, 50306. The employer placed a postmark stamp on the envelope for December 9, 2016. The protest did not reach the correct address until December 23, 2016, which is after the ten-day period had expired. No good cause reason for not using the correct address has been established.

**REASONING AND CONCLUSIONS OF 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.

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 delay was due to the controller mailing the document to an incorrect address. 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 separation from 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 December 28, 2016, reference 08, 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.

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Beth A. Scheetz  
Administrative Law Judge

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Decision Dated and Mailed

bas/rvs