

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELSEY L BRUNSON
Claimant

APPEAL NO: 17A-UI-09867-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHILD CARE JUNCTION INC
Employer

OC: 08/20/17
Claimant: Respondent (1)

Iowa Code section 96.6(2) – Timeliness of Protest
Iowa Code section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the September 15, 2017, reference 04, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on October 11, 2017. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing. Ammie Dighton, Business Manager, participated in the hearing on behalf of the employer. Department's Exhibits D-1 and D-2 were admitted into evidence.

ISSUE:

The issues are whether the employer's appeal is timely and whether the protest is timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: A decision allowing benefits to the claimant was mailed to the employer's last known address of record on September 15, 2017. The employer received the decision. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by September 25, 2017. The appeal was not filed until September 27, 2017, which is after the date noticed on the disqualification decision (Department's Exhibit D-1). The appeal was late because the employer accidentally sent it to the Department of Human Services (DHS) instead of the Appeals Bureau. DHS called the employer immediately and said it would fax it back but by the time it did so, the employer received it and faxed it to the Appeals Bureau, the appeal was late. Under these circumstances, because the employer did intend to fax it within the time allowed but simply sent it to the wrong fax number, the administrative law judge finds the employer's appeal is timely.

The claimant's notice of claim was mailed to the employer's address of record on August 24, 2017, 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. That date fell on September 5, 2017. The employer did not file a protest until September 11, 2017, which is after the ten-day period had expired. (Employer's Exhibit D-1).

The business manager was waiting for the program director to return from vacation because she had a question about the protest. Consequently, she waited until September 11, 2017, to file the protest.

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.

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 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 September 15, 2017, reference 04, decision is affirmed. The employer's appeal is timely. However, the 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn