

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JEREMIAH A BROWN
Claimant

APPEAL NO. 18A-UI-07648-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 03/04/18
Claimant: Respondent (2R)

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated July 11, 2018, reference 01, that concluded it failed to file a timely protest regarding the claimant's separation of employment on March 9, 2018, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on August 6, 2018, pursuant to due notice. Claimant participated personally. Employer participated by Emelia Leeney and Colleen McGuinty. Employer's Exhibits 1-2 were admitted into evidence.

ISSUE:

The issue in this matter is whether the employer's protest is timely.

FINDINGS OF FACT:

The administrative law judge, having 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 March 6, 2018, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until June 22, 2018, which is after the ten-day period had expired.

Employer produced evidence that they had faxed in their protest to the appropriate fax machine number with IWD on March 16, 2018. Employer stated that said facsimile was received by IWD and noted in Employer's Exhibit 2 that IWD had received this protest and other documents on the date sent.

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 protest regarding the separation from employment.

The administrative law judge concludes the employer understandably believed that they had effected a timely protest within the time period prescribed by the Iowa Employment Security Law, and any delay may well have been due to an Agency error pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge concludes that the employer has therefore effected a timely protest pursuant to Iowa Code § 96.6-2.

DECISION:

The decision of the representative dated July 11, 2018, reference 01, is reversed. The employer has filed a timely protest, and this matter shall be remanded to the fact finder for further proceedings.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn