

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLE C CALMER
Claimant

APPEAL NO. 18A-UI-07522-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MATRIX INC
Employer

OC: 06/24/18
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Matrix, Inc., the employer, filed an appeal from a representative's unemployment insurance decision dated July 11, 2018, reference 01, which held that the protest concerning Nichole Calmer's separation on June 14, 2018 was not timely filed. After due notice was issued, a telephone conference hearing was held on August 1, 2018. Although notified, the claimant did not participate. The employer participated by Mr. Brian Ernst, Company President/Owner. Department Exhibit D1 was received into the record.

ISSUE:

Whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: a notice of claim on Nichole Calmer was mailed to the employer's last known address of record on June 26, 2018 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 employer did not file a protest until Monday, July 9, 2018, which is after the ten day period had expired. No good cause reason was established for the delay. The employer was unfamiliar with the procedure to follow, and waited for access to a facsimile machine before protesting.

The notice of claim contains information informing the employer that the employer's account may receive charges unless the employer provides information justifying relief from charging, and specifies that the information protesting the claim was due to be received by July 6, 2018. The document further advises employers that protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown.

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.

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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

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 the court in that decision to be controlling on this portion of the 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 unemployment insurance decision of the representative dated July 11, 2018, reference 01, is affirmed. The employer 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 Nichole Calmer satisfies all other conditions of eligibility.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn