

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JESUS M MANZANARES
Claimant

M & M STAFFING INC
Employer

APPEAL 14A-UI-12438-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/26/14
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the November 25, 2014 (reference 03) unemployment insurance decision that found the employer's protest untimely and allowed unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on December 24, 2014. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through company co-owner Russell Mann. Department's Exhibit D-1 was received.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on November 5, 2014 and was received by 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 (by fax) until December 3, 2014, which is after the ten-day period had expired, because he waited to submit it while attempting to set up an electronic (SIDES) account with IWD. When he was unable to get that accomplished by the November 17, 2014 deadline he submitted the protest by fax on December 3, 2014.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security 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 employer's choice to hold the protest from the due date of November 17, 2014, until he attempted to set up an electronic account with IWD, and delaying the submission of the protest by fax until December 3, 2014 was a business decision. The delay was not due to any *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-4.35(2). No other good cause reason has been established for the delay. 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 termination of employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

DECISION:

The November 25, 2014 (reference 03) decision is affirmed. Employer has failed to file a timely protest and the decision of the representative shall stand and remain in full force and effect.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

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