

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

PATRICK R POFF
Claimant

HNK LLC
Employer

APPEAL 15A-UI-06441-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/02/14
Claimant: Respondent (1)**

Iowa Code § 96.6-2 – Timeliness of Appeal
Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the December 10, 2014, (reference 03) unemployment insurance decision that allowed benefits. The parties were properly notified about the hearing. A telephone hearing was held on July 14, 2015. Claimant did not participate. Employer participated through Hammand Grewal, Owner. Official notice was taken agency records. Department's exhibits D-1 and D-2 were entered and received into the record.

ISSUES:

Did the employer file a timely notice of protest?

Did the employer file a timely notice of appeal?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A notice of claim was mailed to the employer on November 10, 2014. The employer filed their notice of protest on December 4, 2014. The employer received the notice of protest prior to Thanksgiving 2014.

A decision was mailed to the employer on December 10, 2014 notifying them that their notice of protest was too late. In February 2015 the employer learned again through the quarterly statement of charges that their account was being charged. The employer found out about that decision on May 19, 2015 and did not file an appeal until June 4, 2015.

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 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 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 December 10, 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. Benefits are allowed, provided the claimant is otherwise eligible.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs