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

JOHN W GEISINGER
Claimant

APPEAL NO. 08A-UI-01748-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN
Employer

**OC: 04/01/07   R: 02
Claimant: Respondent (2)**

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Employer filed an appeal from a representative's decision dated February 18, 2008, reference 08, which held that the protest concerning John Geisinger's separation on July 31, 2007 was not timely filed. After due notice was issued, a hearing was held by telephone on March 06, 2008. Claimant participated. Nancy Mullaney appeared for employer. Exhibits 1 and 2 were received into evidence.

ISSUE:

At issue in this matter is 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: The claimant's notice of claim was mailed to the employer's address of record on April 05, 2007, 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 fax a protest on April 05, 2007 and received a fax report that the fax had gone through. Later the company was apprised that it had not been received by Iowa Workforce Development. The employer sent it again on February 15, 2008, which is after the ten-day period had expired.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 has shown good cause for failure to effect a timely protest within the time period prescribed by the Iowa Employment Security Law. The administrative law judge concludes that the employer has established good cause for it's failure to effect a timely protest pursuant to Iowa Code section 96.6-2, and there is 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 decision of the representative dated February 18, 2008, reference 08, is reversed. The employer has shown good cause for it's failure to file a timely protest.

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Terence P. Nice
Administrative Law Judge

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Decision Dated and Mailed

tpn/css