

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSHUA E ROSS
Claimant

APPEAL NO. 17A-UI-04535-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

API INC
Employer

OC: 03/26/17
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from a representative's decision dated April 24, 2017, reference 03, decision that allowed benefits to the claimant and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone on May 17, 2017. Claimant did not participate. Employer participated through Ms. Jodie Peterson.

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 6, 2017, 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 April 18, 2017, which is after the ten-day period had expired. No good cause reason has been established for the delay.

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.

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 decision of the representative dated April 24, 2017, reference 03, is affirmed. The 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 claimant satisfies all other conditions of eligibility.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

scn/scn