

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CRYSTAL D HENDERSON
Claimant

APPEAL NO. 09A-UI-04357-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ROBERT J SCHMIDT
CHICK-FUL-A
Employer

OC: 06/08/08
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 9, 2009, reference 04, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on April 15, 2009. The claimant did not participate. The employer participated through Robert Schmidt, Owner/Operator.

ISSUE:

At issue is whether the employer's protest is timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on December 22, 2008 and received by the address of record within ten days. The claim notice 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 March 5, 2009, which is after the ten-day period had expired. The employer had not changed the address of record, relying upon Chick-Ful-A's corporate offices to change the address of record for the employer. At a later date the address of record was successfully changed to Mr. Schmidt's new business address.

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 appeal regarding the separation from employment.

The administrative law judge concludes the employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. The delay was occasioned by the employer failing to change its address of record and the notice of claim being sent to the company's corporate offices and resent to Mr. Schmidt's business location. The delay was not due to any Agency error or misinformation or delay or other action by the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the employer has failed to 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. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979); Franklin v. Iowa Department of Job Service, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

DECISION:

The March 9, 2009, reference 04, decision is affirmed. The employer has failed to file a timely protest and the decision of the representative shall stand and remain in effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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