

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICKOLAS J MIRACLE
Claimant

APPEAL NO: 18A-UI-06969-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

L A LEASING INC
Employer

OC: 03/04/18
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the June 21, 2018, (reference 01) unemployment insurance decision that found the protest untimely and allowed benefits.

The administrative law judge would note that on June 19, 2018, an initial decision, also bearing a reference 01 was rendered by a different representative, which concluded the claimant was eligible for benefits, and the employer was relieved of charges. It is unclear why from the administrative record why a second decision on June 21, 2018 was rendered with the same 01 reference number, and without any indication that it was to replace, amend or nullify the prior reference 01 decision.

After due notice was issued, a hearing was held by telephone conference call on July 16, 2018. The claimant participated through Lexsie Miracle, wife of claimant. (The claimant did not attend). The employer participated by unemployment benefits administrator Colleen McGuinty. Employer Exhibit 1 was admitted into evidence. The administrative law judge took official notice of the administrative record, including the Notice of Claim. The notice of protest was unavailable at the time of hearing. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER: To become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on March 12, 2018, and was received by employer within ten days.

The notice of claim contained a warning that the employer protest response was due ten days from the initial notice date and gave a response deadline of March 22, 2018. The employer sent its notice of protest on March 16, 2018 by fax and received success of confirmation. For unknown reasons, the Agency did not receive the protest.

The administrative record reflects the claimant appears to have requalified for benefits since the separation from the employer but there has been no initial decision regarding the claimant's requalification or separation from employment by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has established it submitted its protest response 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. In this case, the undisputed evidence presented is the employer submitted its protest via fax on March 16, 2018, but the Agency did not receive the fax transmission. Based on the evidence presented, the administrative law judge concludes the protest shall be accepted as timely.

DECISION:

The June 21, 2018, (reference 01) unemployment insurance decision is reversed. The employer has filed a timely protest. **REMAND:** The requalification/separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for an investigation and decision.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn