

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MINDY L HACKER**  
Claimant

**VOYA INSURANCE AND ANNUITY  
COMPANY**  
Employer

**APPEAL 18A-UI-05361-NM-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/08/18**  
**Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Timeliness of Appeal/Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 27, 2018, (reference 01`) unemployment insurance decision that allowed benefits. The parties were properly notified of the hearing. A telephone hearing was held on June 4, 2018. The claimant participated. The employer participated through ADP Claims Analyst Stephanie Festog. Department's Exhibit D-1 was received into evidence.

**ISSUES:**

Is the appeal timely?

Is the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's last known address of record on April 10, 2018. The address of record belonged to the employer's agent, ADP, but was no longer a valid mailing address for the agent. The notice was forwarded to the employer's new address and was received on April 25, 2018. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of April 20, 2018. The employer's agent submitted a response on April 26, 2018. The employer typed a notation on the response, under the address, that the address was incorrect, and provided a correct address. (Exhibit D-1).

The decision finding the protest was not filed in a timely manner and allowing benefits was mailed to the same mailing address as the notice. The employer's agent received the decision on May 7, 2018 and filed an appeal on May 8, 2018. The filing deadline for that appeal was May 7, 2018. On May 8, 2018, the employer's agent checked to see if an address change was ever sent to the Iowa Workforce Development on behalf of the employer. There was no record of the change being sent, so the proper documentation was submitted at that time.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to 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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

The 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.

Here, there are two issues related to timeliness under Iowa Code Section 96.6(2), one relating to timeliness of the protest and the other to the appeal itself. The statute requires the notice of claim to be sent to the last known address of the interested parties. In this case, the last known address was an old address, which led to a delay in the employer's agent receiving the notice. This delay cannot be attributed to any error on behalf of the agency or United States Postal

Service, as it is the party's responsibility to provide information on address changes and, in the case, the employer's agent could not find any evidence of having done such. The argument could be made that this information was provided on April 26, 2018, when the employer's protest was returned, however, it is not surprising that the agent's address correction was not detected by the agency, as it is typed, in small print, in an area of the form where the recipient would have no reason to direct his or her attention. Nevertheless, even if the appeal is considered timely, the protest itself was still not filed in a timely manner.

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 Iowa Admin. Code r. 871-24.35(2). No other good cause reason has been established for the delay. 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

**DECISION:**

The April 27, 2018, (reference 01) unemployment insurance decision is affirmed. Employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.

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Nicole Merrill  
Administrative Law Judge

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Decision Dated and Mailed

nm/rvs