

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE L DIAZ

Claimant

APPEAL NO: 11A-UI-10495-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OBEDIAHS LLC

Employer

OC: 06/26/11

Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a department decision dated July 27, 2011, reference 01, that held it failed to file a timely protest regarding claimant's June 15, 2010 employment separation and benefits are allowed. A telephone hearing was scheduled for August 31, 2011. The claimant and employer did not participate. Official was taken of the employer appeal.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge having heard considered the evidence in the record, finds: The claimant filed an unemployment claim effective June 26, 2011. A notice of claim was mailed to the employer address of record with a protest due date of July 5. The employer was on vacation and did not fax a protest until July 20.

The claimant and employer failed to respond to the hearing notice.

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.

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 § 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 that the employer failed to file a timely protest.

While the employer might have had a good personal reason for the 15-day protest delay, it is not a good legal cause for the late submission.

DECISION:

The department decision dated July 27, 2011, reference 01, is affirmed. The employer failed to file a timely protest, and the department decision remains in force and effect.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs