

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI	
SUSAN L HALTOM Claimant	APPEAL NO. 17A-UI-04061-TNT
AFFINITY CREDIT UNION Employer	ADMINISTRATIVE LAW JUDGE DECISION
	OC: 03/05/17 Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Appeal

STATEMENT OF THE CASE:

Affinity Credit Union, the employer, filed an appeal from a representative's decision dated March 30, 2017, reference 01, which held claimant eligible to receive unemployment insurance benefits finding that the claimant was dismissed from work on March 10, 2017 for unsatisfactory work. After due notice was issued, a hearing was held by telephone on May 5, 2017. Claimant participated. The employer participated by Ms. Rose Foxwell, Representative Aureon HR Inc. and witnesses Ms. Lindsey Held, Assistant Branch Manager and Ms. Lindsey Taylor, Branch Manager and Mr. Andy Fogle, CFO plus and observer. Employer's Exhibit A was admitted into the hearing record.

ISSUE:

At issue in this matter is whether the appeal was timely.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: a disqualification decision was mailed to the employer's last known address of record on March 30, 2017. The employer received the decision at its address of record on March 31, 2017. The decision contained a warning that an appeal must be post marked by or received by the Appeals Section by April 9, 2017. (Because the due date of April 9, 2017 was a Sunday, the due date became the next working day, Monday, April 10, 2017). The appeal was not filed until Tuesday April 11, 2017 which is after the date notice on the disqualification decision. The employer's representative noted that the attempt to submit the appeal by facsimile on April 10, 2017 had not been successful, but did not take other steps such as having the appeal post marked that day to ensure that it was timely. The representative re-submitted the appeal the next day.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

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. . . . 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.

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

The administrative law judge concludes that the employer has failed to file its appeal within the time period prescribed by the Iowa Employment Security Law. The employer's representative was aware that the appeal had not been successfully transmitted by a facsimile on April 10, 2017. Other steps were available to ensure that the appeal was filed timely, but the representative took no additional steps to ensure that the appeal was received timely, instead the representative waited until the following day to transmit the appeal.

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 protest regarding the separation from employment.

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 March 30, 2017, reference 01, is affirmed. The appeal in this case was not timely and the decision of the representative remains in effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

scn/scn