

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANA R KENT
Claimant

APPEAL NO. 09A-UI-15303-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

DETAILS SPA SALON INC
Employer

**Original Claim: 06/14/09
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 representative's decision dated October 7, 2009, reference 02, that it failed to file a timely protest from the claimant's separation from employment on June 13, 2009, and that allowed benefits. A telephone hearing was held on November 12, 2009. The claimant did not participate. Karen Lowman, Owner, participated for the employer.

ISSUES:

Whether the protest is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds that: The claimant separated from employment on June 13, 2009. The claimant filed an unemployment claim on June 14, 2009. The department mailed a notice of claim to the employer's address of record on June 22. The employer's protest is postmarked September 30. The employer delayed the protest because it thought an employee had to be fired to get unemployment.

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 that the employer failed to file a timely protest to the claimant's claim, and benefits are allowed the claimant by reason of her June 13, 2009 separation from employment, provided she is otherwise eligible.

The employer failed to protest within the ten-day period required by law, because it assumed the claimant would not receive benefits due to quitting employment. The employer's reason for delay is not for good cause.

DECISION:

The representative's decision dated October 7, 2009, reference 02, is affirmed. The employer failed to file a timely protest regarding the claimant's employment separation on June 13, 2009, and benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw