

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CARLOS R LUNA
Claimant

APPEAL NO. 17A-UI-07255-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SLS SERVICES LLC
Employer

OC: 10/23/16
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

SLS Services, LLC, the employer, filed a timely appeal from the July 13, 2017, reference 01, decision that allowed benefits to the claimant and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on August 4, 2017. The claimant submitted a telephone number, but was not available at the telephone number provided. The employer participated by Mr. Sergio Luna, company owner. Department's Exhibit D-1 was admitted into the hearing record.

ISSUE:

The issue is whether employer's protest is timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The notice of claim on the claimant, Carlos Luna, was mailed to employer's address of record on June 22, 2017, and was received by employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial *mailing* date. The due date stated on the form itself was July 3, 2017. The employer did not file a protest until July 6, 2017, which is after the 10-day period had expired. The employer chose to return the protest via the FedEx and it was received by Iowa Workforce Development after the 10-day period had expired. The employer had the option of depositing the protest with the U.S. Postal Service to have it postmarked within the 10-day time period, but elected not to do so.

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.

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 failed to protest within the time period prescribed by the Iowa Employment Security Law. 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). Because the employer chose to transmit its protest by a means other than the U.S. Postal Service, the date it was received by the department is the date that it is filed. The administrative law judge further concludes that the employer 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 separation from 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 July 13, 2017, reference 01, decision is affirmed. The employer failed to file a timely protest, and the decision of the representative shall stand and remain in effect. Benefits are allowed provided Carlos Luna satisfies all other conditions of eligibility.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs