

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KATARINA K GOODRICH**  
Claimant

**OPPORTUNITY LIVING**  
Employer

**APPEAL 18A-UI-10967-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/30/18  
Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Employer filed a timely appeal from the November 1, 2018, (reference 02) decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on November 27, 2018. The claimant did participate. The employer participated through Brook Mikkelsen, Director of Human Resources. Employer's Exhibit 1 was admitted into the record. Official notice was taken Iowa Workforce Development records.

**ISSUE:**

Did the employer file a timely notice of protest?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The employer participates in the SIDES system by which notices of claim and their responses are completed via e-mail. Claimant's notice of claim was e-mailed to employer's address of record on October 3, 2018. The employer saw the e-mail, but without opening it, assumed it was junk mail or SPAM and deleted the e-mail. The e-mail notice of claim contained a due date for response by October 15, 2018. The employer only realized that the e-mail was not SPAM when they received another notification on October 30 and opened that one up. The employer filed their notice of protest on October 30, 2018 when they realized that they had ignored a legitimate e-mail notice of claim. The only reason for the delay was the employer's incorrect assumption that the original e-mail notice of claim was junk mail.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security 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 employer's incorrect assumption that the e-mail notice of claim was junk mail is not a good cause reason for failure to file a notice of protest within the time period proscribed by statute. 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 4.35(2). 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. 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 November 1, 2018, (reference 02) decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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