

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

AMBER E HOWZE
Claimant

SPECTRAFORCE TECHNOLOGIES INC
Employer

APPEAL 17A-UI-03849-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/26/17
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Spectraforce Technologies, Inc. (employer) filed an appeal from the March 27, 2017, reference 02, unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on May 17, 2017. The claimant did not respond to the hearing notice and did not participate. The employer participated through Human Resources Assistant Robin Friedman and was represented by Anthony Paradiso. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on March 2, 2017. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of March 13, 2017. Approximately one year ago, the employer's address changed; however, the employer did not update its address with Iowa Workforce Development (IWD) as the agency system still reflects the employer's old address. The employer received the Notice of Claim on March 16, 2017, at its new address, and returned it to IWD the same day.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security 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 employer's failure to update its mailing address with Iowa Workforce Development is not a good cause reason for the delay. The employer has an obligation to keep the agency updated with its address. The Notice of Claim was properly mailed to the employer's last known address. The delay was not due to any *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

DECISION:

The March 27, 2017, reference 02, unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the decision of the representative shall stand and remain in full force and effect.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/rvs

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at:

<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v= mpCM8FGQoY>