

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MAELYNN M ROGERS
Claimant

APPEAL NO. 22A-UI-02900-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PORTILLOS HOT DOGS LLC
Employer

**OC: 04/11/21
Claimant: Respondent (2R)**

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated January 7, 2022, reference 04, that concluded it failed to file a timely protest regarding the claimant's separation of employment on June 24, 2020, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on February 28, 2022, pursuant to due notice. Claimant participated personally. Employer participated by Leslie Ruttenberg. Employer's Exhibits 1-3 were admitted into evidence.

ISSUES:

Whether the employer's protest is timely?

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on April 14, 2021, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than April 26, 2021. The employer did not effect a protest until April 27, 2021, which is after the ten-day period had expired.

The ALJ received exhibits showing that employer successfully faxed a protest to IWD on April 26, 2021.

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.

A portion of the Iowa 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 shown evidence that they did comply with the jurisdictional time limit. Therefore, the administrative law judge retains jurisdiction to entertain a protest regarding the separation from employment.

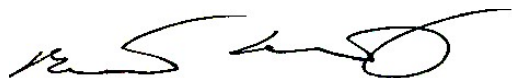
This matter will be remanded to the fact finder for determination of the separation issue.

DECISION:

The decision of the representative dated January 7, 2022, reference 04, is reversed. The employer has filed a timely protest.

REMAND:

This matter will be remanded to the fact finder for determination of the separation issue.



Blair A. Bennett
Administrative Law Judge

March 14, 2022
Decision Dated and Mailed

bab/kmj