

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MARGEEN JAMISON**  
Claimant

**BLAZE INC**  
Employer

**APPEAL 17A-UI-07110-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/11/17**  
**Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 6 2017, (reference 03) 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 July 31, 2017. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer was represented by Noah Keck, vice president. Dominique L’Heureux, general manager, also testified. Department’s Exhibit D-1 and Employer exhibit A were received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**NOTE TO EMPLOYER:** To become a SIDES E-Response participant, you may send an email to [iwd-sidesinfo@iwd.iowa.gov](mailto:iwd-sidesinfo@iwd.iowa.gov). To learn more about SIDES, visit <http://info.uisides.org>.

**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 June 14, 2017, but was not received by employer within ten days.

The address on file is a valid address for the employer and is checked multiple times a week. Ms. L’Heureux checked the mail repeatedly between June 14 and 23, 2017. The mail was not checked June 24 or 25 (Saturday and Sunday), or Monday, June 26, 2017. It was checked on June 27, 2017 and received. It was responded to within the same day as receipt.

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 June 26, 2017. The employer did not file

a protest response until June 27, 2017, which is after the ten-day period had expired because it did not receive the notice of claim until June 27, 2017, when Mr. Keck checked the mail.

The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that employer has filed a timely protest response as 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 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979).

In this case, the employer regularly checked its mail during the prescribed period to respond, but did not receive the notice of claim until June 27, 2017, one day after the due date. The employer did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within one day of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

**DECISION:**

The July 6, 2017, (reference 03) unemployment insurance decision is reversed. The employer has filed a timely protest.

**REMAND:** The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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