

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON C CROOKS
Claimant

APPEAL NO. 17A-UI-03528-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AFFINITY CREDIT UNION
Employer

**OC: 01/29/17
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 30, 2017, reference 01, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on April 25, 2017. The claimant was represented by Michael Carroll, Attorney at Law, and participated personally. The employer was represented by David Shinkle, Attorney at Law, and participated by Rose Foxwell, Human Resources Specialist, and Justin Williams, Chief Financial Officer. Department's Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and 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 February 3, 2017, and received by the 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 employer completed the protest form without certifying it was correct. The employer remembers faxing the uncertified protest on February 8, 2017, to 5157252938@fax.ipfaxnow.com. The department did not receive the document. On March 27, 2017, the employer learned the department did not receive its protest and filed it again at 5152420497@fax.ipfaxnow.com. On March 30, 2017, a representative's decision, reference 01, was issued. No reason was given for not signing/certifying the notice of claim.

REASONING AND CONCLUSIONS OF 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.

Iowa Code § 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

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 protest contains the following warning. "The information provided below in the employer statement of protest section must be certified correct which can be accomplished by completing and signing the signature section on this form." The employer did not sign anywhere on the Notice of Claim. The document specifically states "Certified Correct By (written signature required)". The document is used by the representative of the department to determine whether the claim is valid.

The administrative law judge concludes that employer has 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 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 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). The employer's unsigned protest cannot be considered timely.

DECISION:

The March 30, 2017, reference 01, decision is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs