

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARLON S WOMMACK
Claimant

APPEAL NO. 13A-UI-11324-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PLEASANT VALLEY REDI-MIX INC
Employer

OC: 03/31/13
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Pleasant Valley Redi-Mix (employer) appealed a representative's September 26, 2013, decision (reference 03) that allowed unemployment insurance benefits to Marlon Wommack (claimant) because it found the protest untimely. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on October 31, 2013. The claimant participated personally. The employer was represented by Jean Friemel, Attorney at Law, and participated by Todd Friemel, President, and Ranee Showers, Office Manager. Exhibit D-1 was admitted in evidence. The employer offered and Exhibit One was received into evidence.

ISSUE:

The issue is whether the protest was filed in a timely manner.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on July 16, 2013, and received by employer within ten days. Also on July 16, 2013, the employer received another notice of claim with the claimant's name and an incorrect social security number. 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. In August 2013, after the protest's July 26, 2013 due date, a temporary employee spoke to an unknown worker at the agency who told the temporary employee to wait to file the protest until the agency notified the employer. On September 23, 2013, the employer called the agency and the agency instructed the employer to file the protest. The employer filed a protest on September 23, 2013, which is after the ten-day period had expired. No good cause reason has been established for the delay.

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.

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 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 agency did not instruct the employer to delay filing until after the employer was already past the due date for filing its protest. The administrative law judge further concludes that the employer has failed to timely protest pursuant to Iowa Code section 96.6(2).

DECISION:

The September 26, 2013, reference 03, 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.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/css