

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

DANNY D ROBERTS
Claimant

SHRI NILKANTH LLC
Employer

APPEAL 16A-UI-13045-JP-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/13/16
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the December 5, 2016, (reference 02) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on December 28, 2016. Claimant participated. The employer participated by regional manager Melanie Saner. General manager Danielle Curley attended the hearing on behalf of the employer.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on November 17, 2016, and was received by 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 did not successfully fax a protest until November 29, 2016, which is after the ten-day period had expired.

The employer has shut off its fax machine setting that prints a confirmation page that reports whether the transmission was successful. On November 28, 2016, the employer attempted to fax its protest to Iowa Workforce Development (IWD). The employer did not receive a confirmation that the fax was successful. Late on November 28, 2016, the employer attempted to fax information to a customer, but the customer called and indicated they had not received the employer's fax. The employer discovered the fax machine was not transmitting correctly, so it reset the fax machine, which allowed the fax machine to operate correctly. When the employer discovered that the fax machine was not operating correctly, IWD had closed for the day. The employer did not resend its protest to IWD on November 28, 2016 after it fixed the fax machine. On November 29, 2016, the employer contacted IWD and discovered its fax from November 28, 2016 did not go through, so the employer refaxed its protest.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest 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 an unemployment insurance decision states that such an appeal must be filed within ten days after notification 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 setting 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

The employer's choice to not receive confirmation reports when it sends a fax is a business decision. The employer's decision to not refax its protest after it fixed its fax machine on November 28, 2016 was also a business decision. The employer's fax machine had clearly not worked for a portion of November 28, 2016, but after the employer fixed the fax machine, the employer did not refax its protest knowing it was due on November 28, 2016. Instead the employer chose to wait until the next day (November 29, 2016) to file its protest.

The error in filing the employer's protest on November 28, 2016 was due only to the employer's fax machine. 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. 871-4.35(2). The employer had an opportunity to refax its protest on November 28, 2016, but it chose not to. No other good cause reason has been established for the delay. 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 December 5, 2016, (reference 02) 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.

Jeremy Peterson
Administrative Law Judge

Decision Dated and Mailed

jp/rvs