

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

**RYAN A SATTERLEE**  
Claimant

**APPEAL NO: 19A-UI-05306-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**UPTOWN STAFFING INC**  
Employer

**OC: 03/24/19**  
**Claimant: Respondent (1)**

Iowa Code Section 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 25, 2019, reference 02, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on July 26, 2019. The claimant participated in the hearing. Kim Leggett, Owner; Trisha Clemmons, Staffing Manager/Human Resources; and Christina Garrison, Staffing Manager; participated in the hearing on behalf of the employer. Department’s Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issue is whether the employer’s protest is 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 the employer’s address of record on March 28, 2019, and received by the employer March 29, 2019, which was 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 initially filled out the notice of claim stating it was not protesting it. It attempted to fax it in but it came back as an “NC” which stands for no connection. The employer then chose to throw the notice of claim away.

The claimant was employed as the executive manager of the staffing agency. He worked until March 22, 2019, 30 days after it was agreed he would exit the business. It was common knowledge in the office that the claimant planned to file for unemployment. Staffing Manager/Human Resources Trisha Clemmons, who completes all of the employer’s unemployment paperwork, and had done so for 11 years, asked the claimant about his claim and whether it would “hurt” the employer and he erroneously told her that was why they paid taxes and stated that the employer’s account would not be charged. As a result, Ms. Clemmons did not protest the claimant’s claim for benefits.

On June 15, 2019, the owner of the staffing agency, Kim Leggett, learned from the claimant’s estranged wife that he was collecting unemployment benefits. Ms. Leggett asked

Ms. Clemmons about the claimant's unemployment and she told her about her conversation with the claimant in March 2019 and that she threw away the notice of claim. The employer filed its protest June 20, 2019.

**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.

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). While the claimant made very self-serving statements to Ms. Clemmons about his unemployment claim, she should not have relied on his statements about his own unemployment in making the decision not to protest his claim without speaking to the owner of the staffing agency if she was unclear about the process. There was misinformation that came from the claimant but none that came from the Agency. Consequently, 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).

**DECISION:**

The June 25, 2019, reference 02, 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. Benefits are allowed, provided the claimant is otherwise eligible.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn