

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSEPH E CREGAN
Claimant

APPEAL NO. 09A-UI-00980-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**“SUNSET EQUITIES INC
“WENDY’S
Employer**

**OC: 12/07/08 R: 04
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Sunset Equities, Inc. filed an appeal from a representative’s decision dated January 13, 2009, reference 03, which held that the protest concerning Joseph Cregan’s separation on May 22, 2008 was not timely filed. After due notice was issued, a hearing was held by telephone on February 9, 2009. Although duly notified, Mr. Cregan did not participate. The employer participated by Diane Kelly, General Manager. Exhibit D-1 was received into evidence.

ISSUE:

The issue in this matter is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

The administrative law judge, having 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 December 16, 2008 and received by the employer at its address of record in McPherson, Kansas within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until January 9, 2009, which is after the ten-day period had expired.

The notice was sent to the employer’s address of record and received within ten days. The employer’s policy is to redirect the notice of claim to the local Wendy’s facility and did so. The general manager at the Wendy’s location in question did not receive the notice of claim from the employer’s headquarters until approximately January 7, 2009, after the ten-day statutory period had expired.

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 the 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, delay or other action of the United States Postal Service pursuant to 871 IAC 4.35(2). The administrative law judge concludes that the delay in returning the protest was caused by the employer's choice to have the claims form mailed to its address of record and subsequently to re-mail them to the local Wendy's facilities for completion. The employer has failed to timely protest pursuant to Iowa Code section 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 Department of Job Service, 276 N.W.2d 373 (Iowa 1979); Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979), Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

DECISION:

The January 13, 2009, reference 03, decision is affirmed. The employer has failed to file a timely protest and the decision of the representative remains in effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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