

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KATIE DWYER**  
Claimant

**APPEAL NO. 12O-UI-04895-WT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALBERT CITY-TRUESDALE COMM  
SCHOOL**  
Employer

**OC: 12/11/11**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed the fact-finding decision dated January 12, 2012, reference 03, that concluded it failed to file a timely protest regarding the claimant's separation of employment on June 13, 2011, and no disqualification of unemployment insurance benefits was imposed. A telephone hearing was scheduled and held on June 8, 2012, pursuant to due notice. Employer participated by Barbara Kady, Superintendent. Claimant failed to respond to the hearing notice and did not participate. Exhibits A-B were admitted into evidence.

**ISSUE:**

The issue in this matter is whether the employer's protest is timely.

**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 20, 2011, and received by the employer 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 5, 2012, which is after the ten-day 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 protest regarding the separation from employment.

It should be noted that the employer's position on this case was quite reasonable. The employer was not expecting a claim from an employee who quit in June to be filed in December. The employer is a school which was closed over the winter break when the claim was delivered. The employer had no reason to be looking for this claim at that time. The bottom line is that employers are expected to be responsible for their mail even when they are closed. The law makes no exceptions under these circumstances.

**DECISION:**

The fact-finding decision dated January 12, 2012, reference 03, 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.

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Joseph L. Walsh  
Administrative Law Judge

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Decision Dated and Mailed

jlw/css