

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**MAYRA A NUNEZ**  
Claimant

**J W PERRY INC**  
Employer

**APPEAL 17A-UI-03212-JP-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 02/19/17  
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Employer filed an appeal from the March 17, 2017, (reference 05) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on April 20, 2017. Claimant did not participate. The employer participated by human resources/payroll Jessica Fink.

**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 February 27, 2017, and was received by employer. Ms. Fink is the employee responsible for filing the employer's statement of protest. Three employees handle/process the mail before it is dispersed to Ms. Fink. Two employees open the mail and then give it to the controller. The controller then sorts the mail and disperses it to the appropriate employee. Sometimes the controller sorts the mail into piles and does not disperse the mail for a couple of days. Because of this process, it may take a couple of days for the mail to get to Ms. Fink after the employer receives it. If the controller is out of the office, no mail is distributed. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of March 9, 2017. Ms. Fink received the notice from the controller on March 13, 2017; however, the employer had the notice prior to March 13, 2017. The employer did not file a protest response until March 13, 2017, which is after the ten-day period had expired. Ms. Fink believes the employer got the notice of claim before March 9, 2017. Ms. Fink knows the controller was out of the office on March 10, 2017.

## REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest response 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 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. Iowa Dep't of Job Serv.*, 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.

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

No evidence was presented that the employer did not received the notice of claim before March 9, 2017. The employer's choice to have three employees process its mail before it is dispersed to Ms. Fink is a business decision. The employer filed its protest after the due date listed on the notice of claim. The employer has not shown any good cause for failure to comply with the jurisdictional time limit or that the delay was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand for a fact-finding interview. Iowa Code § 96.6(2).

**DECISION:**

The March 17, 2017, (reference 05) unemployment insurance decision is affirmed. Employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

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**NOTE TO EMPLOYER:**

If you wish to change the address of record, please access your account at:

<https://www.myiowauui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v= mpCM8FGQoY>