

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VIRGIL J BRADLEY
Claimant

APPEAL NO. 11A-UI-14216-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MERWIN LTC PHARMACY IA INC
Employer

OC: 10/02/11
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest
Section 96.5-2-a – Discharge

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated October 21, 2011, reference 01, that it failed to file a timely protest from the claimant's separation from employment on October 6, 2011, and which allowed benefits. A hearing was held on November 28, 2011. The claimant participated. Nancy Finke, HR manager, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUES:

Whether the protest is timely.

FINDINGS OF FACT:

The administrative law judge, having considered the witness testimony and having considered the evidence in the record, finds that: The claimant separated from employment on October 6, 2011, and he filed an unemployment claim. The department mailed a notice of claim to the employer's address of record on October 7 with a protest due date of October 17. The employer's protest was faxed to the department on October 18.

The employer's HR department is located in a different facility and community from the employer's accounting office, which is the address of record. The protest delay is due to an inter-office mail courier being on vacation, such that the notice of claim was not forwarded and received in the HR department until October 18. The employer's representative did not immediately notice the October 17 deadline date until very late in the day, but faxed it in the next day.

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 failed to file a timely protest to the claimant's claim, and benefits are allowed the claimant by reason of his October 6, 2011 separation from employment, provided he is otherwise eligible.

The employer's protest was not within the ten-day period required by law. The delay was due to an internal mail courier issue, which is not a good legal cause for the delay.

DECISION:

The department representative's decision dated October 21, 2011 reference 01 is affirmed. The employer failed to file a timely protest regarding the claimant's employment separation on October 6, 2011, and benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw