

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAEGAN C WEILER
Claimant

4 BROTHERS BAR & GRILL INC
Employer

APPEAL 19A-UI-01230-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/06/19
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed a timely appeal from the January 31, 2019, (reference 04) decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on February 27, 2019. The claimant did not participate. The employer participated through Clint Kass, Owner. Department's Exhibit D-1 was received.

ISSUE:

Did the employer file a timely protest?

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 January 8, 2019, and was received by employer on an unknown date. 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 or in this case January 18, 2019. Employer did not file a protest until January 25, 2019, which is after the ten-day period had expired. Prior to October or November the employer had all notices mailed to their accountant. When they switched accountants in October/November 2018 the mailing address was switched to the physical location of the property. The employer prefers to receive their mail at their post office box. Usually the post office puts mail in the employer's post office box. The notice was in the employer's post office box. The employer only checks their mail at the post office once or twice a week. The employer does not know how long the notice of claim was in their post office box before they retrieved it. The employer was obligated to keep the agency apprised of their correct mailing address. There is no evidence that the mail was mishandled or delayed as the post office normally routes all mail for this employer sent to the physical location to the employer's post office box.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security 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 employer was obligated to provide the correct mailing address to the agency. The post office did as they usually do and put the mail in the employer's post office box. The employer chooses to check their post office box for mail only once or twice per week. 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). 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 termination of 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 January 31, 2019, (reference 04) decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs