

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHELLE R FRANZEN
Claimant

APPEAL NO. 16A-UI-05428-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND HOME CARE INC
Employer

OC: 03/27/16
Claimant: Respondent (2-R)

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated May 4, 2016, reference 05, that concluded it failed to file a timely protest regarding the claimant's separation of employment on June 10, 2015, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on May 31, 2016, pursuant to due notice. Employer participated by Mary Blosser. Claimant failed to respond to the hearing notice and did not participate.

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 April 1, 2016, 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 May 2, 2016, which is after the ten-day period had expired.

Employer stated that they did not receive the document mailed by IWD on or around April 1, 2016. Employer further stated that they have repeatedly dealt with unemployment claims and knew the process. Employer did not find out about the claim until May 2, 2016 when they were examining another claim at the IWD website. Claimant immediately filed its protest upon finding this claim.

REASONING AND CONCLUSIONS OF 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. 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 shown good cause for not complying with the jurisdictional time limit as employer did not have any notice of claimant's unemployment claim until over a month after claimant had filed. Therefore, the administrative law judge retains jurisdiction to entertain any protest regarding the separation from employment.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, but that the delay was due to an Agency error 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 therefore effected a timely protest pursuant to Iowa Code § 96.6-2, and the administrative law judge retains 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). As such, this matter will be remanded to the fact finder for a determination on the merits of this claim.

DECISION:

The decision of the representative dated May 4, 2016, reference 05, is reversed. The employer has filed a timely protest, the decision of the representative is reversed, and the matter shall be remanded to the fact finder to enter a decision on the merits of the matter.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/pjs