

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSHUA J MOHR

Claimant

KEY CITY WINDOW CLEANING CO

Employer

APPEAL 17A-UI-06879-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/04/17

Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the July 5, 2017, (reference 05) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on July 26, 2017. The claimant registered a phone number but elected not to participate once called for the hearing. The employer participated by Annette Lucy, office manager. Jerry Willis also attended on behalf of the employer.

Department's Exhibit D-1 and D-2 were received. Employer Exhibit A was also admitted into evidence. The administrative law judge took official notice of the administrative record, including WAGE-A, the Notice of Claim and protest. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER:

If you wish to change the address of record, please access your account at: <https://www.myiowaui.org/UITIPTaxWeb/>.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to employer's address of record on June 6, 2017, and was received by employer within ten days. 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 June 16, 2017. On June 15, 2017, the employer faxed its response to 515-725-2938. In its protest, the employer stated the claimant was still employed (Department Exhibit D-2). In response to the protest, a fact-finding interview was scheduled and conducted on June 26, 2017, with Deputy 54. As a result of the fact-finding interview, the reference 04 decision was rendered.

While discussing the claimant's employment at the fact-finding interview, the employer was advised by the deputy to resubmit the claimant's notice of claim and amend it to reflect there had been a separation, and so, the employer resubmitted its notice of claim, changing the separation to reflect the claimant was discharged (Department Exhibit D-1). It was faxed on June 26, 2017, the same day of fact-finding interview. Then, Deputy 18 rendered an initial decision, dated July 5, 2017, reference 05, which found the employer's protest was untimely.

The claimant was employed until a June 5, 2017 separation occurred. He was then rehired and worked June 8, 9, and 19th before permanent separation occurred on June 20, 2017. The claimant's separation from employment has not yet been the subject of a Benefits Bureau fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer has established it filed its 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. 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. Based on the evidence presented, the employer did file a protest within the time period prescribed by Iowa Code Section § 96.6(2).

The administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law because it did initially reply to the notice of

claim indicating the claimant was still employed (Department Exhibit D-2). A fact-finding interview was conducted based on the information provided by the employer in its protest. In response, the reference 04 decision was rendered.

At the urging of Deputy 54 on the fact-finding interview, the employer resubmitted the claim form to the agency with new information, in essence as an amended protest. For unknown reasons, a second decision was rendered by Deputy 18, who then determined the notice of claim protest (which was an amended protest or second protest) was untimely. Therefore, based on the evidence presented, the administrative law judge concludes the employer filed a timely protest on June 15, 2017, within the prescribed period to respond.

DECISION:

The July 5, 2017, (reference 05) unemployment insurance decision is reversed. The employer has filed a timely protest.

REMAND: The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/scn