

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RAMELLO L JEFFERSON
Claimant

APPEAL NO. 15A-UI-13442-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DPM MERLE HAY LLC
Employer

OC: 10/25/15
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

DPM Merle Hay LLC, the employer, filed a timely appeal from a representative's decision dated December 1, 2015 (reference 02) that concluded the claimant, Ramello Jefferson, was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' addresses of record, a telephone hearing was held on December 29, 2015. The claimant did not participate in the hearing. The employer participated by Ms. Tami McConnell, Human Resource Representative.

ISSUE:

Should the employer's protest be treated as timely?

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: The employer's Notice of Claim was electronically transmitted after an unemployment insurance claim was filed by Ramello Jefferson. The Notice of Claim filed was electronically transmitted to the employer's facility on October 29, 2015. The employer received the Notice of Claim filed and attempted to protest the claim electronically on the same date. The employer did not note the correct employer tax identification number for one of the locations where Mr. Jefferson had been employed by the company because Ms. McConnell believed that the matter had already been resolved when she had earlier provided a protest on Mr. Jefferson's claim from another of the employer's business locations. Because the correct tax identification number for the claimant in question had not been noted or properly entered into the system, the system did not accept the employer's protest.

Mr. Jefferson had been employed at two of the employer's business locations prior to filing a claim for unemployment insurance benefits. Although there is a common ownership of the business locations, each location has a separate and distinct tax identification number. When the employer later reviewed the issue, the employer realized the system would not accept the protest because the tax identification number was not properly identified by the employer.

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 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.

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

- (1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:
 - a. If transmitted via the United States postal service or its successor, 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 or its successor, on the date it is received by the department.

The employer has not shown that the delay for not complying with the jurisdictional time limit was due to Department error or misinformation or delay or other acts of the United States Postal Service. The employer filed the protest late because the correct tax identification number was not being entered by the employer and because that information was not correct the system would not accept the attempts to protest the claim. Although sympathetic to the employer's plight, the administrative law judge concludes that the ability to enter required information such as the correct employer tax identification number was within the employer's control and the employer could have insured that the protest was successfully transmitted by entering the correct data within the required time limit. Since the employer filed the protest late without any legal excuse, the employer did not file a timely protest because the protest was not filed timely pursuant to Iowa Code Section 96.6-2 and was within the employer's control, and the employer

was aware the protest was not being successfully transmitted and the employer took no other action to ensure that the protest was received or postmarked within the statutory time limit. Although sympathetic to the employer's plight, the administrative law judge concludes that the employer filed the protest late without any legal excuse and the employer, therefore, did not file a timely protest. Because the protest was not filed timely, pursuant to Iowa Code Section 96.6-2, 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 representative's decision dated December 1, 2015 (reference 02) is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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