IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

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

GEORGIA HOLLINGSHEAD
Claimant

BYERLY FOODS INTERNATIONAL
Employer

APPEAL NO: 13A-UI-09933-ET

ADMINISTRATIVE LAW JUDGE DECISION

OC: 02/17/13
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 23, 2013, reference 01, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 24, 2013. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Ron Pitkin, Plant Manager and Dan Devries, Maintenance and Sanitation Manager, participated in the hearing on behalf of the employer. Department's Exhibits D-1 and D-2 and Employer's Exhibits One and Two were admitted into evidence.

ISSUE:

The issue is whether the employer's protest is 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 the employer's address of record on February 26, 2013. 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. The employer did not file a protest until August 27, 2013, which is after the ten-day period had expired. The employer stated it was never made aware of the claimant's notice of claim until being notified by the Corporate Human Resources office of charges to its account regarding the claimant. No good cause reason has been established for the delay.

The employer's corporate office received statement of charges March 31 and June 30, 2013, showing their account was charged for benefits paid to the claimant for both quarters but did not contact the Agency until August 21, 2013, when Jeff Strydio from the Corporate Human Resources office sent an email to the Department questioning the charges to its account.

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 § 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 employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. The delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 4.35(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 separation from 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 August 23, 2013, reference 01, decision 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.

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Julie Elder
Administrative Law Judge

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Decision Dated and Mailed

je/css