

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

BARBARA M DACRE
Claimant

ABCM CORPORATION
Employer

APPEAL 17A-UI-02818-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/15/17
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the March 2, 2017, (reference 04) 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 April 6, 2017. The claimant participated personally and was represented by Jon S. Geyer, paralegal/hearing representative. The employer participated by Todd Allbee, human resources consultant. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

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 the employer's address of record on February 8, 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 February 17, 2017. The employer did not file a protest response until February 20, 2017 (Department Exhibit D-1), which is after the ten-day period had expired.

Mr. Allbee prepared the response to the notice of claim and was personally faxed the notice of claim response. The employer asserted historically it has experienced issues with a busy fax line at IWD but did not know if that occurred in this case. He had no record of fax confirmation or notice of failed submission. He does not recall if he faxed it on Friday, February 17, 2017, the due date, or on Monday, February 20, 2017. The employer was unaware the notice of claim was late until a subsequent fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

Based on the evidence presented, the administrative law judge concludes that employer has failed to protest response 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. Iowa Dep't of Job Serv.*, 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.

Iowa Admin. Code r. 871-24.35(1)(b) provides that a document submitted to the division shall be considered received by and filed with the division: The final day to respond to the notice of claim was February 17, 2017. The employer did not establish that it attempted to submit its response prior to February 20, 2017, when it was faxed and received by the Agency (Department Exhibit D-1). The evidence presented does not support that Agency technical issues or busy fax lines were cause for the delay.

The credible evidence presented is the employer received the notice of claim within the prescribed to respond. Based on the evidence presented, 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). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand for a fact-finding interview. Iowa Code § 96.6(2).

DECISION:

The March 2, 2017, (reference 04) unemployment insurance decision is affirmed. The employer has failed to file a timely protest response, and the unemployment insurance decision shall stand and remain in full force and effect.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

jlb/rvs