

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARREN J FISHER
Claimant

APPEAL NO. 17A-UI-06114-TNT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CSI LLC
Employer

OC: 05/07/17
Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

CSI, LLC, the employer, filed a timely appeal from a representative's decision dated June 8, 2017, reference 01, decision that allowed benefits to the claimant and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone on June 29, 2017. Claimant did not participate. The employer participated through Mr. Michael Curry, Company President.

ISSUE:

At issue in this matter is whether the employer filed a timely protest as required by law.

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 June 16, 2017 but not received by the employer within ten days because the employer had moved from 703 Douglas Street to 701 Douglas Street, Sioux City, Iowa but had not changed its address of record with Iowa Workforce Development prior to May 16, 2017. The employer did not effect a protest until June 2, 2017, which is after the ten-day period had expired. The notice on the claim contained a warning that any protest must be postmarked, faxed or returned no later than ten days from the initial mailing date.

Because the employer's business was no longer located at the address of record where the notice of claim had been sent, the delivery on the notice of claim to the employer was delayed and the employer did not receive the notice that a claim had been filed until after the due date had expired, the employer then took prompt action to protest the claim and to change its address of record with the agency for future use. No good cause has been established for failing to change the company's address of record prior to May 16, 2017.

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.

The administrative law judge concludes the employer's failed to protest in a timely 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 24.35(2). Because the employer's failed to timely protest 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 decision of the representative dated June 8, 2017, reference 03, 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.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

tn/scn