

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSE MORAN
Claimant

WEIGAND OMEGA MANAGEMENT INC
Employer

APPEAL NO. 21A-UI-22958-B2-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/31/21
Claimant: Respondent (2)**

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated October 8, 2021, reference 03, that concluded it failed to file a timely protest regarding the claimant's separation of employment on February 3, 2021, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on December 7, 2021, pursuant to due notice. Employer participated by hearing representative Stacy Tinkham. Claimant did not participate. Employer's Exhibit 1 was admitted into evidence.

ISSUES:

Whether the employer's protest is timely?

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 February 9, 2021, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until February 22, 2021, which is after the ten-day period had expired.

Employer provided documentation of a successfully completed fax sent to the IWD Claims number on February 19, 2020.

REASONING AND CONCLUSIONS OF 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.

A portion of the Iowa 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 protest regarding the separation from employment.

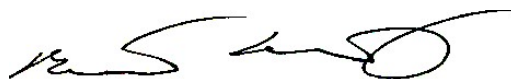
The administrative law judge concludes the employer effected a timely protest within the time period prescribed by the Iowa Employment Security Law. The administrative law judge further concludes that the employer has effected a timely protest pursuant to Iowa Code § 96.6-2, and the administrative law judge retains 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).

This matter will be remanded to the fact finder to make a determination on the separation and potential overpayment issues.

DECISION:

The decision of the representative dated October 8, 2021, reference 03, is reversed. The employer has filed a timely protest in this matter.

This matter will be remanded to the fact finder for a determination on the separation and potential overpayment issues.



Blair A. Bennett
Administrative Law Judge

January 7, 2022
Decision Dated and Mailed

bab/kmj