

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**BENJAMIN D BRYAN**  
Claimant

**GUYER CONCRETE & WALL SYSTEMS**  
Employer

**APPEAL 15A-UI-07119-JP-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 05/17/15**  
**Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Employer filed an appeal from the June 10, 2015, (reference 03) decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on July 29, 2015. The claimant did not register and did not participate. The employer participated by owner Josh Guyer. Department's Exhibit D-1 was received.

**ISSUE:**

Is the employer's protest timely?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on May 21, 2015, and was received by employer within ten days. 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 June 8, 2015, which is after the ten-day period had expired. Mr. Guyer explained that they were opening a new retail facility and they were switching all of their information over. The employer was going through a lot of changes with the mail. However, Mr. Guyer testified that they normally receive mail from Des Moines in two or three days. Mr. Guyer did not know of any reason why they would not have received Department's Exhibit D-1 in that time frame.

**REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security 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.

Employer's choice to switch information over while the business operations continued during the opening of a new retail facility was a business decision. The delay was not due to any *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-4.35(2). No other good cause reason has been established for the delay. 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 termination of employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

**DECISION:**

The June 10, 2015, (reference 03) decision is affirmed. 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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Jeremy Peterson  
Administrative Law Judge

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Decision Dated and Mailed

jp/pjs