

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PAUL WHITMORE
Claimant

APPEAL NO: 09A-UI-01528-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ABC VIRTUAL COMMUNICATION INC
Employer

OC: 12/14/08 R: 02
Claimant: Respondent (1)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

ABC Virtual Communications, Inc. (employer) appealed an unemployment insurance decision dated January 27, 2009, reference 01, which held it failed to file a timely protest regarding the claimant's separation of employment on October 30, 2007 and no disqualification of unemployment insurance benefits was imposed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 19, 2009. The claimant did not participate. The employer participated through Attorney Don Nguyen and Brenda O'Keefe, Chief Accountant. Exhibit D-1 was admitted into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer's protest was timely?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and 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 December 18, 2008. The mailing address was correct but the employer's accountant testified she did not receive the notice of claim until approximately January 5, 2009 and forwarded it to the legal department on January 20, 2009. The accountant admitted she was rather slow in getting the notice to the legal department. 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 file its protest until January 22, 2009, which is after the ten-day period had expired.

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.

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. The accountant testified she received the notice of claim on January 5, 2009 but the protest was not filed until January 22, 2009, which is 17 days after receipt. To excuse a late protest because of clerical errors would be arbitrary and capricious. Since the appeal was not timely, the administrative law judge is without jurisdiction to entertain any protest regarding the separation from employment.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and 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). The administrative law judge further concludes that the employer has failed to effect a timely protest pursuant to Iowa Code section 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. 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 unemployment insurance decision dated January 27, 2009, reference 01, 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.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/css