

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TINA KEITH
Claimant

APPEAL NO. 09A-UI-00462-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRIME VENTURES DEVELOPMENT INC
Employer

OC: 12/14/08 R: 03
Claimant: Respondent (1)

Section 96-6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Prime Ventures Development, Inc., filed an appeal from a representative's decision dated January 7, 2009, reference 02, that held the protest concerning Tina Keith's separation on November 25, 2008, was not timely filed. After due notice was issued, a hearing was held by telephone on January 27, 2009. Ms. Keith participated personally. The employer participated by Mr. Kevin Hochslader and Ms. Sherri Novak-Witt. Exhibit D-1 was received into evidence.

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 the evidence in the record, finds: The claimant's notice of claim was mailed to the employer's address of record on December 18, 2008, 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 due date of December 29, 2008, was clearly indicated in the upper right-hand corner of the notice of claim. The employer did not effect a protest until December 31, 2008, which is after the ten-day statutory period had expired. Prime Ventures Development, Inc., closes its office facilities from December 24 until after the New Year's holiday. Ms. Novak-Witt was at the facility on December 23, 2008, opened the notice of claim, and sent an e-mail to company management regarding the matter. Although the due date specified that the protest was due on December 29, 2008, the employer took no action at that time.

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. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer has failed to protest within the time period 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 4.35(2). The administrative law judge further concludes that the employer has failed to timely protest pursuant to Iowa Code section 96.6-2 and that 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 Department of Job Service, 276 N.W.2d 373 (Iowa 1979), Franklin v. Iowa Department of Job Service, 277 N.W.2d 877 (Iowa 1979), Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990)

DECISION:

The January 7, 2009, reference 02, decision is affirmed. The employer has failed to file a timely protest and the decision of the representative shall stand and remain in effect.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw