

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEAH N CIAVARELLI-LERAAEN
Claimant

APPEAL NO. 09A-UI-03425-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DENISE GERDTS DVM
Employer

OC: 01/25/09
Claimant: Respondent (1)

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

Cedar Veterinary Clinic filed a timely appeal from an unemployment insurance decision dated February 23, 2009, reference 03, which allowed benefits to Leah N. Ciavarelli-Leraaen upon a finding that the employer's protest was not timely. After due notice was issued, a telephone hearing was held March 19, 2009 with Denise Gerdts, DVM and Janice Nelson participating for the employer. The claimant did not participate in the hearing. Exhibit D-1 was admitted into evidence.

ISSUE:

Has the employer filed a timely protest?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Leah N. Ciavarelli-Leraaen filed a claim for unemployment insurance benefits during the week of January 25, 2009. On February 3, 2009 the Agency mailed a Notice of Claim to Cedar Veterinary Clinic, one of the claimant's base period employers. It advised the employer that a response was due not later than February 13, 2009. Denise Gerdts, DVM, the proprietor of the business, attended continuing education seminars in Minnesota and in Ames during this period of time. She first opened the letter from the Agency on February 16, 2009 and filed a protest on the same day.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the protest can be accepted as timely. It cannot. Iowa Code section 96.6-2 gives the employer ten calendar days from the date of the mailing of the Notice of Claim to file a response, known as a protest. State law automatically extends the due date of any documents to be filed with the state if the final day would otherwise fall on a Saturday, Sunday or legal holiday. February 13, 2009 was a Friday. Other than this exception, additional time may be granted only if the delay was the fault of the U.S. Postal Service or Iowa Workforce Development. See 871 IAC 24.35.

The evidence in the record establishes that the delay occurred, not because of the postal service or the Agency, but because of Dr. Gerdts' busy schedule. The delay, while understandable, does not fall in the circumstances contemplated by the law. Since the protest was not timely, the employer cannot be relieved of charges.

DECISION:

The unemployment insurance decision dated February 23, 2009, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. The employer cannot be relieved of charges.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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