

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEEANN RINDERER**  
Claimant

**APPEAL NO. 09A-UI-04355-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHICK-FUL-A OF CORALRIDGE MALL**  
Employer

**OC: 11/02/08**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 9, 2009, reference 05, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on April 14, 2009. The claimant participated. The employer participated by Robert Schmidt, Owner/Operator. Department Exhibit D-1 was received into evidence.

**ISSUE:**

The issue is whether the employer's protest is timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on February 11, 2009 and received by the employer's corporate office at the address of record chosen by the 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 protest until March 5, 2009 which is after the ten-day period had expired. Subsequently the employer changed its address of record so that the notice of claim filed would be mailed directly to Mr. Schmidt's operation location and would not have to be forwarded from the corporate offices as it had in the past when the employer used the corporate address as its address of record.

**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 limit prescribed the Iowa Employment Security Law. No good cause reason has been established for the delay. 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 the administrative law judge lacks jurisdiction to make a decision 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, 881 (Iowa 1979) and Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

**DECISION:**

The March 9, 2009, reference 05, decision is affirmed. The employer has failed to file a timely protest and the decision of the representative shall stand and remain in effect.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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