

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LAURIE HENNING**

Claimant

**APPEAL NO: 08A-UI-11682-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CATERING BY MARLINS INC**

Employer

**OC: 11-09-08 R: 03  
Claimant: Respondent (1)**

Section 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the December 3, 2008, reference 01, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 30, 2008. The claimant did not respond to the hearing notice and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Amber Garry, Human Resources Director, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted 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 November 14, 2008, and received 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 file a protest until November 26, 2008, which is after the ten-day period had expired. No good cause reason as defined by Iowa law has been established for the delay.

**REASONING AND CONCLUSIONS OF LAW:**

Ref. 21

Ref. 83

The administrative law judge concludes that 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 § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from 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 December 3, 2008, reference 01, decision 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.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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