

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE A VILLEGAS**  
Claimant

**APPEAL NO: 06A-UI-08355-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEEF PRODUCTS INC**  
Employer

**OC: 04/02/06 R: 03**  
**Claimant: Respondent (2/R)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

Beef Products, Inc. (employer) appealed a representative's August 17, 2006 decision (reference 02) that concluded Jose A. Villegas (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on September 6, 2006. The hearing notice mailed to the claimant's last-known address, however, came back to the Appeals Section as undeliverable. At the time for the hearing but in lieu of the hearing being held, the administrative law judge determined and the employer's representative concurred that no hearing was necessary and a decision could be made on the record. Based on a review of the information in the administrative file and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Was the employer's protest timely?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective April 2, 2006. A notice of claim was mailed to the employer's last-known address of record on April 4, 2006. The employer received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by April 14, 2006. The employer faxed a completed protest to the Agency on April 11, 2006. While the employer faxed the protest to an Agency fax number other than the one specified for protests to be sent; the employer provided verification that the protest did successfully transmit to a valid Agency fax number. However, upon receipt in the Agency, the protest was not successfully forwarded to the correct Agency section. The Claims Section did not receive a protest from the employer until the employer appealed its quarterly statement of charges on or about August 14, 2006, substantially after the date noticed on the notice of claim for the filing of the protest.

## REASONING AND CONCLUSIONS OF LAW:

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative's decision states 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 has held that this statute clearly limits the time to do so, and 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 the Beardslee court controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a protest recognized as timely.

The record establishes the employer's representative faxed a completed protest to the Agency on April 11, 2006. The administrative law judge concludes that failure to have the protest recognized as having been filed within the time prescribed by the Iowa Employment Security Law was due to error, delay or other action of the Agency pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2. This matter is remanded to the Claims Section to investigate the separation issue and determine whether the employer's account will or will not be subject to charges based on benefits the claimant may receive.

## DECISION:

The August 17, 2006 (reference 02) decision is reversed. The protest in this case was timely. The matter is remanded to the Claims Section for investigation and determination of the separation and chargeability issues.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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