

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD J ASBY
Claimant

APPEAL NO. 09A-UI-08342-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

MILDER CONSTRUCTION LLC
Employer

OC: 05/03/09
Employer: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated June 2, 2009, reference 03, that it failed to file a timely protest from the claimant's separation from employment on September 3, 2008, and benefits are allowed. A hearing was held on June 25, 2009. The claimant did not participate. John Milder, Owner, participated for the employer.

ISSUES:

Whether the protest is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness, and having considered the evidence in the record, finds that: The claimant separated from employment on September 3, 2008. The claimant filed an unemployment claim on May 3, 2009. The department mailed a notice of claim to the employer's address of record on May 7.

The owner has the only key to the employer mailbox, and he was out-of-town for vacation and attending funerals for all but one day during the ten-day protest period. When the employer checked his mail on May 22, he discovered the notice of claim, and faxed a protest to the department on May 26.

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 failed to file a timely protest to the claimant's claim, and benefits are allowed the claimant by reason of his September 3, 2008 separation from employment, provided he is otherwise eligible.

The employer has the right to determine how and when it checks the mail, but this procedure does not excuse the ten-day protest period requirement when a delay occurs due to a vacation or attending funerals. The employer admitted there was one day it could have checked the mail within the ten-day protest period, but chose not to do so.

DECISION:

The decision of the representative dated June 2, 2009, reference 03, is affirmed. The employer failed to file a timely protest regarding the claimant's employment separation on September 3, 2008, and benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/css