

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSE L BOYD
Claimant

APPEAL NO. 08A-UI-11713-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LIBATIONS INC
COCKTAILS & COMPANY**
Employer

**OC: 11/16/08 R: 03
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed a timely appeal from the December 10, 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 on December 30, 2008. The claimant did participate. The employer did participate through Angela Dahl, Owner. Department's Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on November 20, 2008, and received by 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. Employer did not file a protest until December 4, 2008, which is after the ten-day period had expired. No good cause reason 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 termination of 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 10, 2008, reference 01, decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/