

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL P MULLALLY**  
Claimant

**APPEAL NO. 10A-UI-01933-HT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**RED HANKE SALOON**  
Employer

**OC: 01/03/10**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer, Red Hanke Saloon, filed an appeal from a decision dated February 3, 2010, reference 01. The decision found the employer's protest was not timely. After due notice was issued a hearing was held by telephone conference call on March 17, 2010. The claimant participated on his own behalf. The employer participated by Manager Bethene Miller and Owner Michael Hanke. Exhibit D-1 was admitted into the record.

**ISSUE:**

The issue is whether the protest is timely.

**FINDINGS OF FACT:**

Claimant's notice of claim was mailed to employer's address of record on January 12, 2010, 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 January 25, 2010, which is after the ten-day period had expired. No good cause reason has been established for the delay.

**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.

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 section 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 representatives' decision dated February 3, 2010, reference 01, 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.

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Bonny G. Hendricksmeier  
Administrative Law Judge

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Decision Dated and Mailed

bgh/pjs