

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAVID A VOGEL**  
Claimant

**APPEAL NO. 08A-UI-11689-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ASSOCIATED MILK PRODUCERS INC**  
Employer

**OC: 11-16-08 R: 04**  
**Claimant: Respondent (1)**

Section 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Associated Milk Producers Inc. filed a timely appeal from the December 8, 2008, reference 01, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held on December 30, 2008. The claimant did participate. The employer participated through Mr. Jerry Jhonson, Division Manager and Mr. Steve Faust, Plant Superintendent.

**ISSUE:**

At issue in this matter is whether the employer filed a timely protest as required by law.

**FINDINGS OF FACT:**

The administrative law judge having considered all of the evidence in the record, finds: That the claimant's notice of claim was mailed to the employer's address of record on November 21, 2008. The notice was mailed to the address chosen by the employer for its official correspondence, 315 North Broadway, New Ulm, Minnesota 56073. The notice of claim filed was received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until December 2, 2008 which is after the ten-day period had expired. For reasons unknown it appears that the company's headquarters in Minnesota chose to forward the notice of claim to the division offices by United States mail instead of completing the form at the headquarters, faxing it to the division headquarters and communicating with the division headquarters via telephone so that the form could be completed and returned by the headquarters within the ten-day statutory limit.

**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 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 by the United States Postal Service pursuant to 871 IAC 4.35(2). The delay was occasioned by the company's administrative headquarters decision to forward the notice of claim filed to a division office via mail instead of utilizing other means of communication to ensure that the form was completed and returned within the ten-day time limit. The administrative law judge 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 separation of employment. See Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979); Franklin v. Iowa Department of Job Service, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company of Cedar Rapids v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

#### **DECISION:**

The December 8, 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 effect.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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