

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARCO A DESANTIAGO
Claimant

APPEAL NO. 09A-UI-03418-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CURLYS FOODS
Employer

**Original Claim: 02/08/09
Claimant: Respondent (1)**

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

Curly's Foods filed a timely appeal from an unemployment insurance decision dated February 26, 2009, reference 01, that allowed benefits to Marco A. DeSantiago upon a finding that the employer's protest was untimely. After due notice was issued, a telephone hearing was held March 16, 2009, with Mr. DeSantiago participating. Human Resources Assistant Betty Lopez participated for the employer. Exhibit D-1 was admitted into evidence.

ISSUE:

Has the employer filed a timely protest?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Marco A. DeSantiago filed a claim for unemployment insurance benefits during the week of February 8, 2009. On February 11, 2009, the Agency mailed a Notice of Claim to Curly's Foods, advising the employer that a response was due not later than February 23, 2009. The employer received the Notice of Claim on February 19, 2009. It did not file a response until February 24, 2009, because the person whose job it was to complete the response was absent due to illness on February 20 and 23, 2009. The employer does not have a procedure for delegation of this duty in the event that the primary person is unavailable.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the protest can be accepted as timely. It cannot.

Iowa Code section 96.6-2 gives employers ten days from the date of a Notice of Claim to file a responsive document known as a protest. The Supreme Court of Iowa has ruled that a similar time limit in the same section of the Code is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely protest, the Agency has no jurisdiction to consider the merits of the case.

Additional time for filing a document with Iowa Workforce Development can be granted if, and only if, the last day for filing the document falls on a Saturday, Sunday, or legal holiday, or if the delay in filing the document was the fault of the Agency or of the U.S. Postal Service. The evidence in this record persuades the administrative law judge that the delay in this case does not fall within any of the exceptions.

DECISION:

The unemployment insurance decision dated February 26, 2009, reference 01, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The employer cannot be relieved of charges.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw