

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELANIE L CONNELL
Claimant

APPEAL NO: 12A-UI-06487-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIANCHIS HILLTOP RESTAURANT LLC
Employer

OC: 12/04/11
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 24, 2012, reference 04, that concluded its protest could not be accepted because it was not filed timely. A telephone hearing was held on June 26, 2012. Proper notice of the hearing was given to the parties. The claimant failed to participate in the hearing. Tim Bianchi participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Did the employer file a timely protest of the claim?

FINDINGS OF FACT:

A notice of claim was mailed to the employer's address of record on December 14, 2011, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of December 27, 2011. The employer's protest was faxed on December 29, 2011, which was after the time period for protesting had expired. For some reason, the Agency did not receive the protest so the employer faxed it again on May 21, 2012, after receiving a quarterly statement of benefit charges showing that benefits had been charged to its account.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

Iowa Code § 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period allowed by Iowa Code § 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The unemployment insurance decision dated May 24, 2012, reference 04, is affirmed. The employer failed to file a timely protest, and the unemployment insurance decision concluding the claimant is qualified for benefits remains in effect.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css