

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODI M CLAYTON
Claimant

APPEAL NO. 08A-UI-06539-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCHARES FOOD MART INC
Employer

**OC: 06/15/08 R: 03
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Schares Food Mart, Inc. filed an appeal from a representative's decision dated July 8, 2008, reference 02, which held that the protest concerning Jodi Clayton's separation on June 1, 2007 was not timely filed. After due notice was issued, a hearing was held by telephone on July 30, 2008. The claimant participated personally. The employer participated by Sue Foster, Company Owner.

ISSUE:

The 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: The claimant's notice of claim was mailed to the employer's address of record on June 18, 2008 and 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 affect a protest until July 2, 2008, which is after the ten-day period had expired. The company owner, Ms. Foster, delayed completing and returning the protest because of busy business conditions and short staffing. Local flooding caused an increase in business and some employees were required to take time away from work to deal with flood-related matters. Ms. Foster was filling in for other employees during the time and did not mail the protest or perform other administrative duties until she had a better opportunity to do so.

REASONING AND CONCLUSIONS OF LAW:

In addressing the issue of timeliness of an appeal under a portion of the same code section, the Iowa Supreme Court held that the statute prescribing the time of notice of appeal clearly limits the time to do so and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979).

The employer has not shown good cause for not complying with the jurisdictional time limit in this case. Although the administrative law judge is sympathetic to the fact that the company was busy due to flooding in the area and that the company was also short staffed, the administrative law judge nevertheless concludes that the notice of claim filed was received within ten days of its mailing and that the employer had within its control the ability to complete the form and return it in a timely manner.

The administrative law judge concludes the employer failed to affect a timely protest within the time period prescribed by the Iowa Employment Security Law and that the delay was not due to any agency error or misinformation or delay or other action of the U.S. Postal Service pursuant to 871 IAC 24.35(2). As the employer has failed to affect a timely protest pursuant to Iowa Code section 96.6-2, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment.

DECISION:

The decision of the representative dated July 8, 2008, reference 02, is affirmed. The employer has failed to file a timely protest and the decision of the representative shall stand and remain in full force and effect. Benefits are allowed, provided Jodi Clayton satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs