

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUANA DE C DIAZ
Claimant

APPEAL NO. 12A-UI-10615-MT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MJ HOSPITALITY MANAGEMENT INC
Employer

OC: 05/13/12
Claimant: Respondent (2-R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated August 24, 2012, reference 04, that concluded it failed to file a timely protest regarding the claimant's separation of employment on December 4, 2011, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled for and held on May 16, 2012, pursuant to due notice. Employer participated by Mike Jhala, general manager, and Kay Jhala, front desk. Claimant failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

ISSUE:

The issue in this matter is whether the employer's protest is timely.

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 May 16, 2012, and 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 August 23, 2012, which is after the ten-day period had expired. Employer did not receive the protest forms. Employer's first notice was by a statement of charges dated August 9, 2012.

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 shown good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is with jurisdiction to entertain the protest regarding the separation from employment.

This matter is remanded for a fact finding hearing on the separation.

DECISION:

The decision of the representative dated August 24, 2012, reference 04, is reversed and remanded. The employer has filed a timely protest, and this matter is remanded for fact finding hearings.

Marlon Mormann
Administrative Law Judge

Decision Dated and Mailed

mdm/kjw