

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LINDSEY M BEARD**  
Claimant

**APPEAL NO: 17A-UI-06967-TNT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TRIANGLE TAP INC**  
Employer

**OC: 06/11/17**  
**Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

Triangle Tap, Inc., the employer, filed a timely appeal from the July 6, 2017, reference 03, decision that allowed benefits to the claimant and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on July 26, 2017. The claimant did not participate. The employer participated by Mr. Nick Roberts, company president.

**ISSUE:**

The issue is whether the employer file a timely protest.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on June 15, 2017, and was received by employer within ten days. The notice of claim contained a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial *mailing* date, in this case June 26, 2017. The employer did not file a protest until July 5, 2017, which is after the 10-day period had expired. No good cause reason has been established for the delay. The company president lives in Cedar Falls, Iowa and usually only picks up mail that has been delivered to the address of record once per month. Mr. Roberts did not retrieve the mail from the address of record until July 5, 2017, which was after the due date.

**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.

The administrative law judge concludes that 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 of the United States Postal Service pursuant to 871 IAC 4.35(2). The administrative law judge further concludes that the employer failed to timely protest pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

**DECISION:**

The July 6, 2017, reference 03, decision is affirmed. Employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

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Terry P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

rvs/rvs