

IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS SECTION  
1000 EAST GRAND—DES MOINES, IOWA 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

COREY J MILLER  
136 - 7<sup>TH</sup> AVE N  
CLEAR LAKE IA 50428

MARK MILLER AND JAMES E MILLER  
MILLER & SONS GOLF  
2197 JAMES AVE  
BRITT IA 50423

Appeal Number: 05A-UI-01402-SWT  
OC: 12/19/04 R: 02  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 7, 2005, reference 01, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on February 24, 2005. Proper notice of the hearing was given to the parties. The claimant failed to participate in the hearing. Mark Miller participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

A notice of claim was mailed to the employer's address of record on December 27, 2004, 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 January 6, 2005. The employer's

protest was mailed on January 7, 2005, which was after the time period for protesting had expired.

Mark Miller and James Miller are partners who own the business of the employer. Mark Miller normally handles the administrative and sales duties for the business while James Miller handles the maintenance and repair functions. The business is located on the family farm, which is the address to which the business' mail is delivered. Mark Miller was out of town for personal reasons from December 26, 2004, through the evening of January 6, 2005. While he was out of town, the Millers' mother collected the mail until Mark Miller returned from his trip.

Mark Miller opened the mail and discovered the notice claim on January 7, 2005 and immediately completed and mailed in the protest. James Miller was working in the employer's shop on the family farm during the time that Mark Miller was out of town but did not review the mail.

#### 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 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.

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 prescribed by Iowa Code Section 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). The employer should have arranged for James Miller or someone else to open and respond to mail in Mark Miller's absence.

#### DECISION:

The unemployment insurance decision dated February 7, 2005, reference 01, 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.

saw/tjc