

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAVIER DUARTE
Claimant

BEAR CREEK DAIRY LP
Employer

APPEAL 18A-UI-04228-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/11/18
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the March 28, 2018, (reference 03) unemployment insurance decision that allowed benefits based upon a separation from employment. The parties were properly notified about the hearing. A telephone hearing was held on April 30, 2018. Claimant did not register for the hearing and did not participate. Employer participated through co-owner Theodora Kouwenberg. Employer's Exhibit 1 was received. Department's Exhibit D-1 was received.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on February 13, 2018, and was received by employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer did not file a protest until March 22, 2018, which is after the ten-day period had expired because the employer did not open the envelope containing the notice of claim when it was initially received.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security 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.

In this case employer filed its protest after the deadline expired because of a self-imposed delay in opening its mail. The delay was not due to any *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-4.35(2). No other good cause reason has been established for the delay. The administrative law judge further concludes that the employer has 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

DECISION:

The March 28, 2018, (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.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

cal/rvs