

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LOGAN D KELLEY**  
Claimant

**APPEAL NO. 10A-UI-01134-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TWIN COUNTY DAIRY INC**  
Employer

**Original Claim: 12/27/09  
Claimant: Respondent (4)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

Twin County Dairy, Inc. filed a timely appeal from a representative's decision dated January 15, 2010, reference 02, that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held on March 2, 2010, via telephone conference call. The claimant participated. The employer participated through Christopher Landherr, attorney at law, and witness Joanne Roetlin, controller. Employer's Exhibits One and Two and Agency Exhibit D-1 were received into evidence.

**ISSUE:**

At issue is whether the employer's protest was timely filed and whether the employer is subject to charging.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's notice of claim was not mailed to the employer's address of record on December 31, 2009, but in fact was deposited with the U.S. Postal Service and postmarked January 4, 2010 (See Exhibit One). The employer received the notice of claim and completed it within ten days, returning it to Iowa Workforce Development via facsimile on January 12, 2010. The issue of Logan Kelley's separation from employment has not been investigated or adjudicated at the claims level. However, the claimant has re-qualified for unemployment insurance benefits by earning ten times or more than his weekly benefit amount in insured employment since his separation from employment with Twin County Dairy, Inc.

**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 the employer filed its protest within the time period prescribed by the Iowa Employment Security Law. The notice was not mailed to the employer on December 31, 2009, as indicated, but was postmarked January 4, 2009. There is sufficient evidence in the record of the employer's compliance with the requirement that they protest within ten days any potential charges to their account. The issue of charging to the employer's experience account is moot and does not need to be ultimately determined; because, after the claimant worked for the employer but before he filed his claim for benefits, the claimant earned more than ten times his weekly benefit amount in insured wages from another employer. As a result, the reason for the claimant's separation in May 2009 does not affect the claimant's eligibility to receive unemployment insurance benefits. See Iowa Code section 96.5-1-g; 871 IAC 24.28(1). The employer's account is not subject to charging for any benefits that the claimant might receive.

**DECISION:**

The representative's decision dated January 15, 2010, reference 02, is modified in favor of the employer. The claimant has re-qualified to receive unemployment insurance benefits after his employment ended in May of 2009. Because the claimant has re-qualified to receive unemployment insurance benefits, the employer's account will not be charged. Benefits will be allowed as to the separation of the claimant, if the claimant is otherwise eligible.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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