

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JAIRO E MARTINEZ**  
Claimant

**BADAWI PIZZA COMPANY INC**  
Employer

**APPEAL 18A-UI-02453-CL-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/07/18  
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the February 16, 2018, (reference 01) unemployment insurance decision that allowed benefits based upon an untimely protest. The parties were properly notified about the hearing. A telephone hearing was held on March 19, 2018. Claimant did not register for the hearing and did not participate. Employer participated through regional manager Mohamed Badaoui. 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 January 16, 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 the first week of February 2018, because of an oversight on the employer's behalf.

**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's delay in filing the protest 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 February 16, 2018, (reference 01) 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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Christine A. Louis  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
1000 East Grand Avenue  
Des Moines, Iowa 50319-0209  
Fax (515)478-3528

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Decision Dated and Mailed

cal/scn