

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RYAN W LANTAU**  
Claimant

**APPEAL NO: 06A-UI-11432-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BUCK'S PIZZA**  
Employer

**OC: 10/29/06 R: 04  
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

Buck's Pizza (employer) appealed a representative's November 21, 2006 decision (reference 07) that held Ryan W. Lantau (claimant) qualified to receive unemployment insurance benefits and the employer's account subject to charge because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 13, 2006. Neither party participated in the hearing. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits during the week of October 29, 2006. On November 6, 2006, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until November 16, 2006 to respond to the notice.

The employer received the notice of claim on or before November 16, 2006. The employer signed a completed form on November 16, 2006. The Department did not receive the employer's protest until November 17, 2006. The record does not establish when the employer faxed its protest.

The claimant's last day of work for the employer was February 6, 2006. Between February 6 and October 29, 2006, the claimant earned more than ten times his weekly benefit amount of \$84.00 from other employers.

## REASONING AND CONCLUSIONS OF LAW:

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code section 96.6-2. Another portion of Iowa Code section 96.6-2 dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code section 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The record indicates the employer received the notice of claim on or before November 16 or in time to file a timely protest. The employer did not participate in the hearing. Therefore, the record does not establish a legal excuse for the employer filing its protest late. 871 IAC 24.35(2). Since the employer did not file a timely protest, the Appeals Section has no legal jurisdiction to relieve the employer's account from charge. See 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 representative's November 21, 2006 decision (reference 07) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. The Appeals Section has no jurisdiction to relieve the employer's account from charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs