

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TRICIA K EVANS

Claimant

APPEAL NO. 15A-UI-01524-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LIBERTY HOTELS INCORPORATED

Employer

OC: 12/21/14

Claimant: Respondent (1)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Liberty Hotels Incorporated filed an appeal from a representative's decision dated January 27, 2015 (reference 02) which held the protest concerning Tricia Evans' separation, on June 29, 2014, was not timely filed. After due notice was provided, a telephone hearing was held on March 3, 2015. Although the claimant submitted a telephone number for the hearing, she was not available at the telephone number provided. The employer participated by S. Reddy, General Manager.

ISSUE:

At issue in this matter is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on December 23, 2014 and received by the 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 January 26, 2015; which is after the ten-day period had expired. The protest was delayed because the general manager visits the location where Ms. Evans was employed only intermittently and also may have "overlooked" the notice of claim filed.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 failed to affect a timely protest within the time period prescribed by the Iowa Employment Security Law. This was due to any Agency error or misinformation or delay or other action of the United States Postal Service, pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the employer has failed to timely protest, pursuant to Iowa Code section 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. IDJS, 276 N.W.2d 373 (Iowa 1979); 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 decision of the representative dated January 27, 2015 (reference 02) is affirmed. The employer has failed to file a timely protest. The decision of the representative shall stand and remain in full force and effect. Benefits are allowed, providing that Tricia Evans satisfies all other conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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