

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALEJANDRO MERINO-ROJAS
Claimant

APPEAL NO. 07A-UI-00538-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FRIESEN USA INC
Employer

**OC: 12/17/06 R: 01
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Friesen USA, Inc. (employer) appealed a representative's January 12, 2007 decision (reference 03) that concluded Alejandro Merino-Rojas (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was 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 February 1, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Terry Pearson, the safety director/human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, 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 started working for the employer on August 19, 2005. The claimant worked until November 2, 2005. The claimant quit his employment because he accepted other employment. From November 2, 2005, through December 17, 2006, the claimant worked and earned wages from another employer that totaled more than \$1,500.00.

The claimant established a claim for benefits during the week of December 17, 2006. A notice of claim was mailed to the employer on December 26, 2006. The employer's facility was shutdown the week of December 25, 2006. Neither the plant nor office opened again until January 2, 2007. Pearson took a two-week vacation and did not return to work until January 8, 2007. Pearson is the only person who handles the employer's unemployment insurance issues.

When Pearson returned to work on January 8, 2007, he immediately saw the unopened envelope that contained the notice of claim. Pearson completed the form and faxed it to the Department on January 8, 2007.

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 facts indicate the employer did not receive the notice of claim until January 2, 2007. Since the employer received the notice of claim prior to the January 5, 2007 deadline, the employer has not established a legal excuse for filing its protest on January 8, 2007. 871 IAC 24.35(2). Even though Pearson was on vacation for two weeks, and did not open the notice of claim until January 8, 2007, the employer made a business decision that Pearson is the only person authorized to handle such matters. While the employer established a business reason for not filing a timely appeal, the employer could just have easily made arrangements for another employee to handle time-sensitive matters in Pearson's absence. Under the facts of this case the employer did not file a timely protest or establish a legal excuse for filing a late 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 January 12, 2007 decision (reference 03) 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 legal jurisdiction to relieve the employer's account from charge. The claimant remains qualified to receive unemployment insurance benefits, and the employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs