

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID E MORGAN

Claimant

APPEAL NO. 09A-UI-06665-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

O'MALLEY & MCGEES MEXICAN CAFÉ INC

Employer

**Original Claim: 03/29/09
Claimant: Respondent (2-R)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the April 22, 2009, reference 02, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held on May 27, 2009, by telephone. The claimant did not participate. The employer did participate through Robert Cummings, company owner. Department's Exhibit D-1 was received into evidence.

ISSUE:

The issue is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on April 2, 2009. The employer did not receive the notice of claim within ten days, as the delivery of the notice was delayed by the U.S. Postal Service. Mr. Cummings had filed a change of address and later discovered that the Postal Service was "holding" mail and not delivering it promptly. The employer immediately filed a protest upon receiving the notice of claim after it was delayed by the U.S. Postal Service.

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer has shown good cause for its failure to protest within the time period prescribed by the Iowa Employment Security Law. The delay was due to acts of the United States Postal Service pursuant to 871 IAC 4.35(2). The administrative law judge further concludes that the employer has shown good cause for failing to protest pursuant to Iowa Code section 96.6-2.

The issue of David Morgan's separation from employment is remanded to the Claims Section of Iowa Workforce Development for initial investigation and determination.

DECISION:

The April 22, 2009, reference 02, decision is reversed. The employer has shown good cause for failing to file a timely protest. The separation issue is remanded to the Claims Section of Iowa Workforce Development for initial investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw