

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOSE C MINCHOCA
Claimant

APPEAL NO. 09A-UI-02109-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BEATON INC – BURGER KING
Employer

**Original Claim: 01/04/09
Claimant: Respondent (2-R)**

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Beaton, Inc. filed an appeal from a representative's decision dated February 3, 2009, reference 06, which held that the protest concerning Jose Minchoca's separation on July 20, 2008 was not timely filed. After due notice was issued, a hearing was held by telephone on March 4, 2009. The employer participated by Kathy Frerichs, Controller. Mr. Minchoca did not respond to the notice of hearing.

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 January 12, 2009. The employer moved from that address on or about December 15, 2008 and placed a forwarding order with the postal service. The notice of claim was not received by the employer until January 26, 2009. The employer was told by its mail carrier that, after the flooding in Cedar Rapids in June of 2008, mail is now sent out of state to process forwarding orders. The employer did not effect a protest until January 26, 2009, which is after the ten-day period had expired.

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 shown good cause for not complying with the jurisdictional time limit. The employer did not receive the notice of claim in a timely manner due to circumstances beyond its control. The employer filed its protest immediately the day it received the notice of claim.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and the delay was due to action of the United States Postal Service pursuant to 871 IAC 24.35(2). Therefore, the protest filed on January 26, 2009 shall be deemed timely filed. As such, the agency has jurisdiction over the separation issue. This matter shall be remanded to Claims to adjudicate the separation issue.

DECISION:

The decision of the representative dated February 3, 2009, reference 06, is reversed. The employer filed a timely protest to Mr. Minchoca's claim. This matter is remanded to Claims to adjudicate the separation issue.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs