

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**Appeal Number: 06A-UI-05728-RT
OC: 01-22-06 R: 03
Claimant: Respondent (1)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**PATRICIA D KUJACZYNSKI
1106 MUSCATINE AVE
IOWA CITY IA 52240-5500**

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**PATRICK R COYLE
D/B/A COYLE'S PLUMBING REPAIR
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**GREGG GEERDES
ATTORNEY AT LAW
609 IOWA STATE BANK BUILDING
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(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness and Appropriateness of Protest)

STATEMENT OF THE CASE:

The employer, Patrick R. Coyle, doing business as Coyle's Plumbing Repair, filed a timely appeal from an unemployment insurance decision dated May 23, 2006, reference 02, allowing unemployment insurance benefits to the claimant, Patricia D. Kujaczynski, because the employer's protest could not be accepted. After due notice was issued, a telephone hearing was held on June 19, 2006, with the claimant participating. The claimant was represented by Gregg Geerdes, Attorney at Law. Patrick R. Coyle participated on his own behalf as the employer, Patrick R. Coyle, doing business as Coyle's Plumbing repair. The employer had other witnesses available to testify but they were not called because their testimony would have been unnecessary. Department Exhibit's One and Two were admitted into evidence. The

administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

Because this matter raised serious and complicated jurisdictional issues concerning the employer's protest, the administrative law judge restricted the testimony to those issues and did not take evidence or testimony on the remaining issues, namely, the separation from employment and any overpayment of unemployment insurance benefits. The administrative law judge informed the parties that if he found the employer's protest was timely and appropriate or, in the alternative, the employer demonstrated good cause why his protest was not timely or appropriate, the administrative law judge would reschedule a hearing to take evidence on and decide the separation issue and the overpayment issue. The administrative law judge informed the parties that if he found that the employer's protest was not timely or appropriate and the employer could not demonstrate good cause for a delay in the filing of his protest or for inappropriately filing the protest, the administrative law judge would do a decision to that effect and the administrative law judge would then have no jurisdiction to decide the remaining issues and no further testimony would be taken. That decision could then be appealed by the employer to the Employment Appeal Board. As herein after set forth, the administrative law judge concludes that the employer's protest was not appropriate and not timely and therefore the administrative law judge has no jurisdiction to reach the remaining issues and therefore any further hearings to take evidence on the remaining issues are not necessary and no such hearings will be scheduled.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibits One and Two, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective January 22, 2006. A notice of the claimant's claim, as shown at Employer's Exhibit One, was sent to the employer on January 30, 2006. The notice of claim was received by the employer. The notice of claim indicated that the deadline for a protest, if any, was February 9, 2006. As shown at Department Exhibit One, which is the notice and the employer's "protest," the employer returned the notice or "protest" on February 7, 2006. The notice returned by the employer or the "protest" was timely filed. However, the notice or "protest" as returned by the employer indicates no marks on the protest section of the notice or "protest" on the left hand side. However, on the right hand side for benefits paid to the claimant, the employer entered both vacation pay and holiday pay. The "protest" or notice was signed by the employer and dated February 7, 2006 and apparently faxed to Iowa Workforce Development and received by Iowa Workforce Development on February 8, 2006. Iowa Workforce Development did not consider the "protest" or notice returned by the employer as any formal protest of the claimant's claim because no such boxes were completed nor was the remarks section. Therefore, the claimant received benefits which began with benefit week ending January 28, 2006 and has continued thereafter.

On or about May 9, 2006, Iowa Workforce Development mailed a quarterly statement of charges for the first quarter of 2006 to the employer. The employer received the quarterly statement of charges and sent a letter to Tax and Chargebacks as shown at Department Exhibit Two postmarked May 19, 2006. It was received by Tax and Chargebacks on May 22, 2006. This letter was then treated as a protest of the claimant's claim. This protest is over three months late. The decision from which the employer appeals was then issued on May 23, 2006 and the employer timely appealed the decision.

The only reason given by the employer for failing to properly complete the "protest" or notice, was that he was confused and thought that there would be a hearing held in which he could testify as to the reason the employer believed the separation from employment was disqualifying. However, the employer appropriately completed the benefits paid to claimant section including vacation pay and holiday pay. The employer also gave as a reason why he did not complete the protest section appropriately that he had a relationship with the claimant and he did not want to bring up other issues but the notice of claim only provides general statements as to the reason the employer believes that the claimant would be disqualified to receive unemployment insurance benefits including a discharge for misconduct. The employer then testified that he did not think the claimant would file for unemployment insurance benefits but the claimant never indicated to the employer that she would not file for unemployment insurance benefits nor did she indicate to the employer that the employer should not file a protest. The purpose of the notice sent to the employer is to inform the employer that a claim for unemployment insurance benefits has been filed. The employer then stated that he did not complete the protest appropriately because the claimant had not informed him that she was filing for unemployment insurance benefits. However, claimants generally do not inform employers that they are filing for unemployment insurance benefits. Rather, the notice of claim sent to the employer notifies the employer that a claim has been filed.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely and appropriate protest of the claimant's claim or, if not, whether the employer established good cause for such failure. The administrative law judge concludes that the employer's protest was not appropriate and not timely and he has not demonstrated good cause for such failures and therefore the protest should not be accepted. The administrative law judge further concludes that as a result he does not have jurisdiction to reach the remaining issues.

2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach this issue.

3. Whether the claimant is overpaid unemployment insurance benefits. The administrative law judge does not have jurisdiction to reach this issue.

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.

Iowa Code section 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits

paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The administrative law judge concludes that the employer has the burden to prove that his protest was timely and appropriate or that he had good cause for delay in filing its protest or in filing the protest inappropriately. The administrative law judge concludes that the employer has failed to meet his burden of proof to demonstrate by a preponderance of the evidence either that his "protest" was timely and appropriate or that he had good cause for failing to file a protest timely and in an appropriate fashion. The employer's "protest" appears at Department Exhibit One. The employer timely filed the "protest" as shown at Department Exhibit One and as set out in the Findings of Fact. However, the administrative law judge is constrained to conclude that the "protest" by the employer is not a formal protest or a valid protest or an appropriate protest. The employer omitted any indication on the "protest" as to the reasons that the claimant should be disqualified to receive unemployment insurance benefits nor did the employer complete the remarks section. The employer testified that he was confused and thought there would have been a hearing. However, the employer appropriately marked the boxes for vacation pay and holiday pay and appropriately filled in the dates of the pay and the amounts. It appears that the employer properly understood that section of the notice and the protest. The employer then testified that he did not complete the protest section because of his personal relationship with the claimant but this is not good cause for failing to fill out a protest correctly and appropriately. It is not necessary on the protest form to divulge any kind of relationship. It is only necessary to mark one of the appropriate boxes containing a general term such as discharge for misconduct. The employer then testified that he did not think the claimant would file for unemployment insurance benefits but this is no reason for failing to fill out the protest. Clearly, when the employer received the notice of claim the employer was aware that the claimant had filed for unemployment insurance benefits. Further, there is no evidence that the claimant ever indicated to the employer that she was not going to file for unemployment insurance benefits nor is there any evidence that the claimant ever indicated to the employer that he should not file a valid and appropriate protest. The employer then testified that the claimant had not informed him that she was filing for unemployment insurance benefits and therefore did not complete the protest appropriately. However, parties generally do not inform the employer that they are filing for unemployment insurance benefits. The purpose of the notice of claim is to inform the employer of the claim for unemployment insurance benefits and give the employer an opportunity to protest the claim if the employer wishes. Here the employer did not fill out the protest section and did not really protest the claimant's claim. The notice of claim clearly states that "the protest box . . . must be indicated on all responses." Iowa Workforce Development was justified in believing that the employer was not protesting the claimant's claim but was merely filing the "protest" or notice to divulge the vacation pay and holiday pay. Accordingly, the administrative law judge concludes that the timely "protest" was not valid and appropriate and therefore, was not, in effect, a protest and the employer did not protest the claimant's claim at that time. The employer then sent a letter to Tax and Chargebacks as shown at Department Exhibit Two in an envelope bearing a postmark of May 19, 2006. This letter was treated as a protest of the claimant's claim but the letter is over three months late. For the reasons noted above, the administrative law judge concludes that the employer has not demonstrated good cause for that kind of a delay in the filing of a protest.

The employer did receive a quarterly statement of charges which was mailed on May 9, 2006 from Iowa Workforce Development. The claimant's letter at Department Exhibit One dated May 16, 2006 and postmarked May 19, 2006 could be interpreted as an appeal of the quarterly statement of charges. An appeal of a quarterly statement of charges must be filed within 30 days after the date of the mailing of the quarterly statement of charges and the employer did so here. However, an employer can only appeal a quarterly statement of charges if the employer has not been notified of the filing of the claimant's claim as provided in Iowa Code section 96.6 (2). As discussed above the employer got such a notice of claim and failed to file an appropriate and valid protest in a timely fashion. Accordingly, the administrative law judge is constrained to conclude that the employer can not now appeal the quarterly statement of charges.

In summary, and for all of the reasons set out above, the administrative law judge is constrained to conclude that the employer's initial "protest" or response to the notice of claim although timely was not valid and appropriate and did not act as a protest of the claimant's claim as shown at Department Exhibit One. Further, the administrative law judge is constrained to conclude that the employer's letter postmarked May 19, 2006 as shown at Department Exhibit Two although treated as a protest, was not timely being over three months late and the employer has not demonstrated good cause for the delay in the filing of this protest. Finally, the administrative law judge is constrained to conclude that because the employer received a notice of claim the employer can not now appeal the quarterly statement of charges. Accordingly, the administrative law judge concludes that the employer's "protest" was invalid and the employer's later protest was not timely and the employer has not demonstrated good cause for preparing either an invalid protest or an untimely protest and therefore, the employer's protest should not be accepted and the administrative law judge has no jurisdiction to reach the remaining issues. Accordingly, the administrative law judge concludes that the employer has failed to effect a timely and valid protest within the time period prescribed by the Iowa Employment Security Law and has further failed to establish or demonstrate good cause for such failures. Therefore, the administrative law judge concludes that he lacks jurisdiction to make a determination with respect to the other issues presented including the separation from employment and, as a result, the representative's decision dated May 23, 2006, reference 02, should remain in full force and effect and the claimant is not disqualified to receive unemployment insurance benefits. Unemployment insurance benefits are allowed to the claimant, provided she is otherwise eligible and entitled to such benefits.

DECISION:

The representative's decision of May 23, 2006, reference 02, is affirmed. The employer has failed to file a timely and/or valid and appropriate protest and has not demonstrated good cause for failing to file a timely and valid and appropriate protest and therefore, the protest should not be accepted. The decision of the representative shall stand and remain in full force and effect. The claimant, Patricia D. Kujaczynski, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

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