

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON B ESSARY

Claimant

APPEAL NO. 07A-UI-03794-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANAMA TRANSFER INC

Employer

**OC: 03/18/07 R: 03
Claimant: Respondent (1)**

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

Panama Transfer, Inc. filed a timely appeal from an unemployment insurance decision dated April 6, 2007, reference 02, that allowed benefits to Jason B. Essary upon a finding that the employer's protest was untimely. After due notice was issued, a telephone hearing was held on April 27, 2007 with President Dean Kloewer participating for the employer. Exhibit D-1, a copy of the employer's protest, was admitted into evidence. Mr. Essary did not respond to the hearing notice.

ISSUE:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Jason B. Essary filed a claim for unemployment insurance benefits effective March 18, 2007. On March 23, 2007 a Notice of Claim was mailed to Panama Transfer, Inc. The Notice advised the employer that a response was due no later than April 2, 2007. The protest was returned on April 3, 2007.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the administrative law judge has authority to relieve the employer of charges. This in turn depends on whether the employer filed a protest within the time limit set by statute.

Iowa Code section 96.6-2 gives an employer ten days from the date of mailing to respond to the Notice of Claim. The Supreme Court of Iowa has ruled that the time limit set in that section of the statute is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely protest, the administrative law judge has no authority to grant the relief requested by the employer.

Mr. Kloewer testified that either the mail had been delivered to him late or that he was unaware of the due date of the response. From this equivocal testimony, the administrative law judge concludes that the employer has not established by a preponderance of the evidence that the delay in filing the protest was the fault of the Postal Service. Under these circumstances, no relief may be granted.

DECISION:

The unemployment insurance decision dated April 6, 2007, reference 02, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The employer cannot be relieved of charges.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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