

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT G PENNEY**  
Claimant

**APPEAL NO. 12A-UI-07600-MT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HEARTLAND EXPRESS INC OF IOWA**  
Employer

**OC: 01/01/12**  
**Claimant: Respondent (2-R)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed the representative's decision dated June 19, 2012, reference 01, that concluded it failed to file a timely protest regarding the claimant's separation of employment on January 28, 2011, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on July 18, 2012, pursuant to due notice. Claimant failed to respond to the hearing notice and did not participate. Employer participated by Dave Dalmasso, human resource representative. Exhibit One was admitted into evidence.

**ISSUE:**

The issue in this matter is whether the employer's protest is timely.

**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, 2012, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer filed a fax protest January 16, 2012, which is within the ten-day period. Employer has proof that they faxed the protest form by documentation from the individual that sent the fax.

**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.

The administrative law judge concludes the employer effected a timely protest within the time period prescribed by the Iowa Employment Security Law, and the delay was due to Agency

error or misinformation or delay or other action of Appeals Bureau pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the employer has effected a timely protest pursuant to Iowa Code section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); 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 decision of the representative dated June 19, 2012, reference 01, is reversed and remanded for a fact-finding hearing on the separation issue.

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Marlon Mormann  
Administrative Law Judge

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Decision Dated and Mailed

mdm/kjw