

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BRIELLE A DUFFY**  
Claimant

**CDS GLOBAL INC**  
Employer

**APPEAL NO: 13A-UI-10039-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/03/13**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest  
Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated August 30, 2013, reference 06, that held it failed to file a timely protest regarding claimant's employment separation on November 26, 2012, and benefits are allowed. A telephone hearing was held on October 1, 2013. The claimant participated. Linda Burns, Employee Relations Specialist, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUE:**

Whether the employer filed a timely protest.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant filed an unemployment claim effective March 3, 2013. The department mailed a notice of claim to the employer's address of record on March 7 with a protest due date of March 18, 2013. The employer could not offer proof that it faxed a protest to the department on March 8 and the employer representative did not seek assistance to go back and check the employer fax record. The department did not receive a March 8 faxed protest. The department was unaware the employer was protesting claimant's claim until it appealed the August 30, 2013 decision.

Claimant was hired on November 15, 2010 and last worked as a full-time CSR on November 5, 2012. The employer issued claimant a second written warning for excessive absences on November 5. Claimant signed for the warning and it does not state she is terminated.

Claimant was repeatedly absent from November 6 through November 26 on eleven occasions. She was a no-call/no-show to work on November 16 and called on November 17 stating she would be returning to work. She was a no-call/no-show to work for three consecutive days November 20, 21 and 23. When the employer did not hear from claimant on Monday, November 26, she was terminated as a voluntary quit based on job abandonment.

**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 failed to file a timely protest within the ten-day period required by law. If an employer mails in a protest an envelope post mark is proof that it was sent. When there is an issue of an employer fax protest, an employer fax confirmation statement that it was received and/or employer fax log with a successful result (like ok) is sufficient. The employer admits it did not seek internal assistance to verify the March 8 fax to the department.

**DECISION:**

The department decision dated August 30, 2013, reference 06, is affirmed. The employer failed to file a timely protest, and the department decision that allows benefits remains in force and effect.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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