

**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**

**NANCY J GIFT
2293 STATE HWY 2
BEDFORD IA 50833**

**NORTHWEST SERVICES
2332 S MAIN ST
MARYVILLE MO 64468**

**Appeal Number: 06A-UI-06633-HT
OC: 12/25/05 R: 01
Claimant: Respondent (2-R)**

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.

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed a representative's decision dated June 22, 2006, reference 01, that concluded it failed to file a timely protest regarding the claimant's separation of employment on June 12, 2006, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on July 18, 2006, pursuant to due notice. The claimant participated on her own behalf. The employer participated by Office Manager Cherish Carrigan. Exhibit D-1 was admitted into the record.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and 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 May 26, 2006, 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 June 5, 2006.

The employer faxed in the initial protest on June 5, 2006, indicating the claimant was to return to work on June 12, 2006. Ms. Gift did not return to work on the scheduled day and the employer then modified the notice of claim form by putting *Updated* at the top and adding a comment to the comment box saying the claimant did not return and was a voluntary quit. This was faxed on June 20, 2006.

The claimant's separation has not been adjudicated.

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 employer timely protested the lay off and also timely protested the change in Ms. Gift's status of voluntary quit. The error was in using the same form with the same due date as the notice for the lay off. This caused confusion as it appeared to be a late protest to the original notice rather than a new response.

The administrative law judge considers the employer's protest was timely as far as the change in status.

The issue of the claimant's separation should be remanded for adjudication.

DECISION:

The decision of the representative dated June 22, 2006 reference 01, is reversed. The employer has filed a timely protest.

The issue of the claimant's separation from employment is remanded to the Claims Section for adjudication.

bgh\pjs