

**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**

**ERIC L VAN ZEE
139 W 1ST ST
SIOUX CENTER IA 51250**

**JUNGJOHAN ENTERPRISES INC
24310 – 182ND ST
SPIRIT LAKE IA 51360**

**Appeal Number: 05A-UI-01387-RT
OC: 01-02-05 R: 01
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.

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 – Initial Determination (Timeliness of Protest)

STATEMENT OF THE CASE:

The employer, JungJohan Enterprises, Inc., filed a timely appeal from an unemployment insurance decision dated January 27, 2005, reference 04, allowing unemployment insurance benefits to the claimant, Eric L. Van Zee, because the employer's protest was not timely. After due notice was issued for a telephone hearing on February 24, 2005 at 10:00 a.m., neither the claimant nor the employer responded to the hearing notices by calling in telephone numbers where the parties or any witnesses could be reached for the hearing. Consequently, no hearing was held. The administrative law judge takes official notice of Iowa Workforce Development department unemployment insurance records for the claimant.

FINDINGS OF FACT:

Having examined the record, the administrative law judge finds: An authorized representative of Iowa Workforce Development issued a decision in this matter on January 27, 2005, reference 04, allowing unemployment insurance benefits to the claimant because the employer's protest was not timely. The claimant filed a claim for unemployment insurance benefits effective January 2, 2005. A notice of that claim was sent to the employer on January 10, 2005 and indicated that a protest was due by January 20, 2005. However, as shown on the protest in the administrative file, the employer faxed its protest to Iowa Workforce Development on January 21, 2005, making the protest one day late. The employer did not participate in the hearing to provide reasons why the protest was late. Following the separation from the employer herein on or about January 15, 2004, the claimant has more than requalified to receive unemployment insurance benefits by earning from insured work far more than ten times his weekly benefit amount of \$237.00 or \$2,370.00. Records show the claimant has had earnings from two different employers after the employer herein totaling \$15,231.36.

REASONING AND CONCLUSIONS OF LAW:

The question presented by this appeal is whether the employer filed a timely protest of the claimant's claim or, if not, whether the employer can demonstrate good cause for such failure. The administrative law judge concludes that the employer's protest was not timely and that the employer has not demonstrated good cause for a delay in the filing of its protest and therefore such protest should not be accepted.

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 Iowa Code section 96.6-2 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 the 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. Iowa Department of Job Service, 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 that portion of Iowa Code section 96.6-2 which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

The administrative law judge concludes that the employer has the burden to prove that its protest was timely or that it had good cause for delay in the filing of its protest. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence either that its protest was timely or that it had good cause for delay in the filing of its protest. On its face, the protest appears to be one day late as set out in the findings of fact. The employer did not participate in the hearing and provide reasons why the protest was late. In its appeal, the employer states that it was late because an individual was out of town. However, there is no evidence of how long the individual was out of town or if that individual was the only one that could accept a notice of claim and file a protest. The employer must have received a copy of the notice because it did

file a protest thereof. In the absence of any specific evidence showing good cause for a delay in the filing of the protest, the administrative law judge is constrained to conclude that the employer has not demonstrated good cause for delay in the filing of its protest. Accordingly, the administrative law judge concludes that the employer has failed to effect a timely protest within the time period prescribed by the Iowa Employment Security law and has further failed to establish or demonstrate good cause for such delay and therefore, the decision dated January 27, 2005, reference 04, should remain in full force and effect and the claimant is entitled to receive unemployment insurance benefits. The administrative law judge notes that the claimant has more than requalified to receive unemployment insurance benefits since separating from the employer herein and would still be entitled to benefits even if the separation from the employer herein was disqualifying.

DECISION:

The representative's decision dated January 27, 2005, reference 04, is affirmed. The employer has failed to file a timely protest and has not demonstrated good cause for delay in the filing of such protest and the protest is, therefore, not accepted. The decision of the representative shall stand and remain in full force and effect. The claimant, Eric L. Van Zee, is entitled to receive unemployment insurance benefits provided he is otherwise eligible.

sc/tjc