

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KELLY R MCMIUEN**  
Claimant

**APPEAL NO. 09A-UI-01365-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JOHNSTON AUTO & INDUSTRIAL/STM LLC**  
**IOWA AUTO SUPPLY**  
Employer

**OC: 12/21/08 R: 03**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated January 21, 2009, reference 01, which held the protest concerning Kelly McMiuen's separation on July 16, 2008 was not timely filed. After due notice was issued, a hearing was held by telephone on February 16, 2009. Although duly notified, the claimant did not participate. The employer participated by Carolyn Alger, Office Manager.

**ISSUE:**

At issue in this matter is whether the employer filed a timely protest as required by law.

**FINDINGS OF FACT:**

The administrative law judge having considered all of the evidence in the record, finds: The claimant's notice of claim was mailed to the employer's address of record on December 23, 2008 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 did not effect a protest until January 5, 2009 when the employer faxed its protest to Iowa Workforce Development. That date is after the ten-day period allowed by statute had expired. The employer's delay in filing a timely protest was caused because the company offices had been shut down on December 25, 2008 and January 1, 2009. The office manager received the notice of claim but was unable to complete or return it until the company owners had verified the information with the office manager.

**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 the employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. The delay was not due to any Agency error or misinformation or delay or action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the employer has failed to timely protest pursuant to Iowa Code section 96.6-2 and this administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See Beardslee v. Iowa Department of Job Service, 276 N.W.2d 373 (Iowa 1979) and Franklin v. Iowa Department of Job Service, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The January 21, 2009, reference 01, decision is affirmed. The employer has failed to file a timely protest and the decision of the representative shall stand and remain in effect.

---

Terence P. Nice  
Administrative Law Judge

---

Decision Dated and Mailed

css/css