

**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**

**GREG L TRELSTAD
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BURLINGTON IA 52601**

**REMEDY TEMPORARY SERVICES INC
c/o FRICK UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864**

**Appeal Number: 05A-UI-08374-JTT
OC: 07/03/05 R: 04
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 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 4, 2005, reference 04, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held on August 30, 2005. The claimant did not participate. Claims Service Representative Nancy Flaiz of Talx UC Express represented the employer and presented additional testimony through Claims Service Representative Lisa Scott of Talx UC Express. Workforce Development Unemployment Insurance Service Center Supervisor Arlene Franks testified. Department's Exhibit D-1 and Exhibits One through Six were received into evidence.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Notice of Claim, form 65-5317, was mailed to the employer's address of record on July 7, 2005, and received by the employer within ten days. The Notice of Claim contains a warning that any protest must be postmarked, faxed or returned not later than July 18, 2005. The employer did not file a protest until July 19, 2005, which is after the ten-day period had expired. The employer submitted the protest by mail. The envelope containing the protest bore a postmark of July 19, 2005. No good cause reason has been established for the delay.

Claims Service Representative Lisa Scott of Talx UC Express handled the employer's protest. Ms. Scott processed the protest at or about 4:59 p.m. on the day of the filing deadline, July 18, 2005. Ms. Scott then placed the protest in an envelope, sealed the envelope, applied a stamp, and walked the document to the Talx UC Express mailroom. The envelope was not postmarked by the United State's postal service until the following day.

When the employer's protest was received at the Unemployment Insurance Service Center, the Agency representative who processed the protest placed two date stamps on the protest. One date stamp recorded the postmark date on the envelope in which the protest arrived: July 19, 2005. A second date stamp recorded the date the protest was received at the Unemployment Insurance Service Center: July 21, 2005.

On July 28, 2005, an Agency representative entered a decision, reference 03, that allowed benefits and deemed the employer's protest untimely. The reference 03 decision erroneously indicated, in the Explanation of Decision, that the employer's protest had been postmarked on July 21, 2005. This was, in fact, the date the protest had been received by the Agency. On August 3, 2005, Claims Service Representative Nancy Flaiz of Talx UC Express spoke with Unemployment Insurance Service Center Supervisor Arlene Franks regarding the postmark date. Though the envelope in which the appeal arrived was no longer available, the date stamp record of the postmark on the protest form was available. On August 4, 2005, an Agency representative entered the reference 04 decision, which amended the reference 03 decision to provide the correct postmark date of the employer's protest: July 19, 2005.

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.

An employer's protest submitted by mail is deemed filed on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it was received, or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion. See 871 AC 24.35(1)(a). An employer's protest submitted by any other means is deemed filed on the date it is received by the Unemployment Insurance Division of Iowa Workforce Development. See 871 IAC 24.35(1)(b).

The administrative law judge concludes that employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. The evidence indicates that the Talk UC Express Claims Service Representative waited to process the employer's protest until 4:59 p.m. on date the protest was due. This delay in processing the protest resulted in the protest not being postmarked until the following day. The delay in filing the protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service. See 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 the administrative law judge lacks 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 Agency representative's August 4, 2005, reference 04, decision is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

jt\pjs