

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSE J ALVAREZ VALDEZ**  
Claimant

**APPEAL NO. 10A-UI-15687-VST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SWIFT GREENHOUSES INC**  
Employer

**OC: 10/03/10  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from a decision of a representative dated November 9, 2010, reference 02, which held that the employer's protest was not timely. After due notice, a telephone conference hearing was scheduled for and held on January 4, 2011. Claimant participated. Employer participated by Shauna Cook, Office Manager.

The dispositive issue in this case was the timeliness of the employer's protest. The record consists of the testimony of Shauna Cook. Official notice is taken of agency files.

**ISSUE:**

Whether the employer's protest is timely.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered all of the evidence in the record, makes the following findings of fact:

The claimant filed a claim for unemployment insurance benefits with an effective claim date of October 3, 2010. A notice of claim was sent to the employer on October 8, 2010. The response was due by October 18, 2010. The employer attempted to file a faxed protest on October 18, 2010. An error report was generated by the fax, but the office manager was not aware of that error report until October 25, 2010. The protest was re-faxed on that date and received.

**REASONING AND CONCLUSIONS OF LAW:**

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code section 96.6-2. Another portion of Iowa Code section 96.6-2 dealing with timeliness of an appeal from a representative's decision states 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 court has

held that this statute clearly limits the time to do so, and 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 the Beardslee court controlling on the portion of Iowa Code section 96.6-2 that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

871 IAC 24.35(2) provides in pertinent part:

The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

In this case, the evidence established that the protest in this case was not filed in a timely manner. The claim for benefits was established on October 3, 2010, and any protest had to be postmarked by October 18, 2010. The protest was not received until October 25, 2010. Iowa law provides that a protest can be timely if the delay is due to department error or misinformation or to delay or other action of the United States Postal Service. The delay in this case was due to the failure of a fax to go through. Although employers are permitted to file by fax, the employer must insure that the fax is actually received. Accordingly, the protest is not timely and the administrative law judge does not have jurisdiction to rule on the merits of the separation of employment.

**DECISION:**

The decision of the representative dated November 9, 2010, reference 02, is affirmed. The employer did not file a timely protest of the claimant's claim for unemployment insurance benefits.

---

Vicki L. Seeck  
Administrative Law Judge

---

Decision Dated and Mailed

vls/css