

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CINDY S KROB**  
Claimant

**APPEAL NO. 09A-UI-14509-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DAVID'S BRIDAL INC**  
Employer

**Original Claim: 03/22/09  
Claimant: Respondent (1)**

Iowa Code section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer representative filed an appeal on behalf of the employer from the September 15, 2009, reference 01, decision that allowed benefits and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on November 6, 2009. The claimant provided a telephone number for the hearing, but was not available at that number at the time of the hearing and did not participate. Matt Crain, Claims Representative for ADP/TALX UC eXpress, represented the employer. Exhibit One and Department Exhibits D-1 and D-2 were received into evidence.

**ISSUES:**

Whether the employer's protest of the claim for benefits was timely.

Whether there is good cause to deem the employer's late protest as timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: On March 31, 2009, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was April 10, 2009. The employer's representative of record is UC Express. The employer's address of record is c/o UC Express, P.O. Box 66744, St. Louis, MO 63166-6744. The address corresponds to a TALX UC eXpress claim processing center. The notice of claim was received at the employer's address of record on April 2, 2009. The notice of claim was then routed to Matt Crain, Claims Representative for ADP/TALX UC eXpress. On April 3, 2009, Mr. Crain drafted a protest letter and sent it via the TALX computer network to the TALX printing room, where a letter was printed. TALX has mailroom staff responsible for placing the letter in an envelope. The mailroom processes thousands of documents per day. TALX contracts with a third-party to convey its mail to the United States Post Office. Mr. Crain believes TALX has an agreement with the Post Office whereby any mail collected from TALX at any point on a given day will be postmarked that day. Mr. Crain believes the protest at issue in this matter was processed out by the mailroom, collected by the third party, and placed in the mail stream on

April 3. But, Mr. Crain lacks personal knowledge regarding whether the steps that should follow the printing of the protest letter actually occurred.

Workforce Development did not receive the April 3, 2009 protest letter until September, when it arrived attached to a September 2, 2009 letter from Linda Jones, ADP Charge Analyst. That correspondence bore a September 2, 2009 postage meter mark. Between April 3, 2009 and September 2, 2009, the employer representative, and the employer, took no steps to follow up on the protest. The further action was prompted by the employer's receipt of a quarterly statement of charges that included an assessment for benefits disbursed to Ms. Krob.

## **REASONING AND CONCLUSIONS OF LAW:**

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, 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 is 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.

b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department.

871 IAC 24.35(2) provides:

(2) 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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

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 the court 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 evidence establishes that the employer had a reasonable opportunity to file a timely protest. The weight of the evidence in the record fails to establish that the protest letter Mr. Crain drafted on April 3, 2009 ever left the TALX facility in St. Louis. Given that, the evidence also fails to establish that the Post Office ever received the protest letter or that Workforce Development received the protest letter prior to the mailing dated September 2, 2009. The weight of the evidence indicates a protest filed on September 2, 2009, the postage meter mark on the protest that was received by Workforce Development.

The evidence in the record establishes that the employer's protest was untimely. The evidence establishes that the employer's failure to file a timely protest was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, the administrative law judge lacks jurisdiction to disturb the Agency's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, or the employer's liability for benefits. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall stand and remain in full force and effect.

**DECISION:**

The Agency representative's September 15, 2009, reference 01, decision is affirmed. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall stand and remain in full force and effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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