

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 VAN WIE  
980 DRY RUN CREEK CT  
HIAWATHA IA 52233

WESTSTAFF USA INC  
c/o TALX UC EXPRESS  
PO BOX 66864  
ST LOUIS MO 63166-6864

Appeal Number: 05A-UI-02887-DT  
OC: 01/30/05 R: 03  
Claimant: Respondent (2/R)

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Weststaff USA, Inc. (employer) appealed a representative's March 7, 2005 decision (reference 02) that concluded Greg Van Wie (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 6, 2005. The claimant participated in the hearing. Zheng Cui of TALX UCM Services appeared on the employer's behalf and offered testimony; one other witness, Christopher Walters, was available on behalf of the employer but did not testify. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

#### FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective January 30, 2005. A notice of claim was mailed to the employer's last known address of record on February 1, 2005. The employer apparently forwarded the protest on to the employer's representative, TALX UCM Services. The employer's representative received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by February 11, 2005. The protest form as reviewed by the Agency was with an envelope postmarked on February 25, 2005, which is after the date noticed on the notice of claim.

Mr. Cui, the employer's customer service representative with TALX UCM Services, signed the protest form on February 11, 2005 and attached a responsive letter also dated February 11, 2005. Mr. Cui testified that he personally took the completed protest to the representative's postal area and placed it into a receptacle that is within the control and custody of the United States Postal Service.

#### REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether the employer filed a timely protest. 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 Supreme 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 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. 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 an 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). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes the employer's representative placed a completed protest into the custody of the United States Postal Service on February 11, 2005, within the time for filing a timely protest. The administrative law judge concludes that failure to have the protest attached to an envelope postmarked within the time prescribed by the Iowa Employment Security Law was due to department error or error, delay, or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code section 96.6-2. This matter is remanded to the Claims Section to investigate the separation issue and determine whether the employer's account will or will not be subject to charges based on benefits the claimant may receive.

DECISION:

The March 7, 2005 (reference 02) decision is reversed. The protest in this case was timely. The matter is remanded to the Claims Section for investigation and determination of the separation issue.

ld/pjs