

**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**

**SANDRA M BLACKMON
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**DES STAFFING SERVICES INC
3326 INDIANOLA AVE
DES MOINES IA 50315**

**Appeal Number: 05A-UI-04864-S2T
OC: 04/17/05 R: 01
Claimant: Respondent (5)**

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
Section 96.5-1-j – Separation from Temporary Employer

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated May 3, 2005, reference 02, that concluded it failed to file a timely protest regarding the claimant's separation of employment on March 31, 2005, and no disqualification of unemployment insurance benefits was imposed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on May 26, 2005. The claimant did not provide a telephone number where she could be reached and, therefore, did not participate. The employer participated by RoseAnne Crise, Payroll Coordinator. Exhibit D-1 was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on December 6, 2004, as a temporary worker. On March 21, 2005, the claimant was to work a four day assignment at Adessa as a part-time receptionist. At 6:48 a.m. March 29, 2005, the claimant notified the employer of her lack of transportation. Later that day the claimant notified the employer she had obtained transportation and sought reassignment. The employer told the claimant no work was available. The claimant telephoned the employer again on April 1, 2005, requesting reassignment. No work was available. The employer kept no records of the telephone calls and thought the claimant quit work.

The claimant's notice of claim was mailed to the employer's address of record on April 19, 2005, 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 effected a protest on April 29, 2005, by fax which is within the ten-day period. The department had no record of receiving the protest.

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 shown good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge has jurisdiction to entertain any protest regarding the separation from employment.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and the delay was due to Agency error or misinformation or delay pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the employer has effected a timely protest pursuant to Iowa Code section 96.6-2, and the administrative law judge has 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).

The issue is whether the claimant was separated from the employer for any disqualifying reason.

Iowa Code section 96.5-1-j provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

The claimant sought reassignment within three working days of her last assignment. She satisfied the requirements of Iowa Code section 96.5-1-j. Benefits are allowed.

DECISION:

The decision of the representative dated May 3, 2005, reference 02, is modified with no effect. The employer has filed a timely protest. The claimant is eligible to receive unemployment insurance benefits.

bas/sc