

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA L EVANS**  
Claimant

**APPEAL NO. 08A-UI-06060-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILLIAMSBURG MCDONALD'S**  
Employer

**OC: 05/18/08 R: 03**  
**Claimant: Respondent (2-R)**

Section 96.6(2) – Timeliness of Protests

**STATEMENT OF THE CASE:**

Williamsburg McDonald's filed an appeal from a representative's decision dated June 27, 2008, reference 03, which held that the protest concerning Amanda Evans' separation on April 6, 2007 was not timely filed. After due notice was issued, a hearing was held by telephone on July 16, 2008. The employer participated by Lyndsee Detra, Human Resources. Ms. Evans did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether the employer filed a timely protest as required by law.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on June 4, 2008, and received by the employer on June 6. 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 did not effect a protest until June 24, 2008, which is after the ten-day period had expired.

The employer was required to evacuate its office in Coralville, Iowa, on June 12, 2008 due to flooding. The employer was able to return to the office on June 16. All materials in the office had to be packed and sent to other areas for storage. Employees were not allowed to handle flood-damaged items. The employer was not able to retrieve Ms. Evans' personnel file until June 23. Once the file was retrieved, the protest was completed and faxed to Workforce Development on June 24, 2008.

**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 herein has shown good cause for not complying with the jurisdictional time limit. The employer was unable to have full access to its files beginning June 12 because of flooding. Because the delay was due to matters beyond the control of the employer, the protest filed by fax on June 24, 2008 shall be deemed timely filed.

The administrative law judge concludes that the employer's protest shall be deemed timely filed as required by Iowa Code section 96.6(2). As such, Workforce Development has jurisdiction over the issue of Ms. Evans' separation from McDonald's. This matter shall be remanded to Claims to adjudicate her separation from the employment.

**DECISION:**

The decision of the representative dated June 27, 2008, reference 03, is reversed. The employer filed a timely protest to Ms. Evans' claim. This matter is hereby remanded to Claims to adjudicate the separation issue.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/css