

**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**

**JAMES J VITERA
14011 RILEY ST APT 2904
OVERLAND PARK KS 66223-4256**

**ROCKWELL AUTOMATIC INC
c/o TALX UCM SERVICES
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 06A-UI-07992-HT
OC: 11/27/05 R: 12
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, 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

STATEMENT OF THE CASE:

The employer appealed a representative's decision dated July 26, 2006, reference 02, that concluded it failed to file a timely protest regarding the claimant's separation of employment on July 26, 2006, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on August 24, 2006, pursuant to due notice. The claimant participated on his own behalf. The employer participated by TALX representative Tammy Robinson. Exhibit D-1 was admitted into the record.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses and having considered all of the evidence in the record, finds that: The claimant's notice of claim was

mailed to the employer on December 5, 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 did not effect a protest until June 7, 2006, which is after the ten-day period had expired.

The notice of claim was mailed to an incorrect address. TALX had notified Iowa Workforce Development in September 2004 it was the representative for the employer and all notices should be sent to it. TALX did not respond until it received the quarterly statement of charges.

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.

The employer did not receive the original notice of claim because Iowa Workforce Development sent it to an incorrect address. The employer responded timely when it first received notice of charges to its account and the protest shall be accepted as timely.

DECISION:

The decision of the representative dated July 26, 2006 reference 02, is reversed. The employer's protest shall be accepted as timely.

The issue of the claimant's separation from employment is remanded to the Claims Section for determination.

bgh\cs