

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AMANDA L STOUT**  
Claimant

**APPEAL NO. 11A-UI-14190-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WHIRLPOOL CORPORATION**  
Employer

**OC: 08/07/11**  
**Claimant: Respondent (2)**

Section 96.6-2 – Timeliness of Protest/Timeliness of Appeal  
871 IAC 24.35(2) – Protest Delay

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated September 9, 2011 reference 04, that it failed to file a timely protest from the claimant's separation from employment on March 4, 2011, and which allowed benefits. A hearing was held on November 28, 2011. The claimant did not participate. Brian Kennedy, unemployment state specialist for TALX, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUES:**

Whether the protest is timely.

Whether the appeal is timely.

**FINDINGS OF FACT:**

The administrative law judge, having considered the evidence in the record, finds that: The claimant separated from employment on March 4, 2011. The claimant filed an unemployment claim effective August 7. The department mailed a notice of claim to the employer's representative address of record on August 11. The representative faxed the protest to the department on August 19, and it received a confirmation statement at 11:08 a.m. the same day it had been received. The employer protest is within the ten-day period deadline of August 22.

The department mailed the decision directly to the employer without notification to its representative on September 9. The employer forwarded the decision to its representative, who faxed an appeal letter on October 28.

The claimant failed to respond to the hearing notice.

## 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 not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer filed a timely protest to the claimant's claim on August 19, 2011, and the department failed to acknowledge it at that time. The employer protest was within the ten-day period required by law.

Iowa Code Section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

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.

The administrative law judge further concludes the employer filed a timely appeal, as the delay was due to department error. The department correctly mailed the notice of claim to the employer's representative, but it failed to include the representative when it mailed the decision. The appeal delay was due to forwarding the decision to the representative, who should have received timely notice of the decision.

**DECISION:**

The department representative's decision dated September 9, 2011, reference 04, is reversed. The employer filed a timely protest and appeal.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw