

**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**

**KIMBERLY D DODSON
717 W 4TH ST
OTTUMWA IA 52501-2218**

**RIVER HILLS COMMUNITY HEALTH
CENTER
PO BOX 458
OTTUMWA IA 52501-0458**

**Appeal Number: 06A-UI-05628-RT
OC: 04-16-06 R: 03
Claimant: Respondent (1)**

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 – Initial Determination (Timeliness of Protest)

STATEMENT OF THE CASE:

The employer, River Hills Community Health Center, filed a timely appeal from an unemployment insurance decision dated May 19, 2006, reference 03, allowing unemployment insurance benefits to the claimant, Kimberly D. Dodson, because the employer's protest was not timely. After due notice was issued, a telephone hearing was held on June 20, 2006, with the claimant participating. Rick Johnson, Chief Executive Officer, and Dr. Manisha Kalra, Medical Director, participated in the hearing for the employer. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. A hearing was initially scheduled for this matter on June 14, 2006 at 11:00 a.m. and rescheduled at the employer's request.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective April 16, 2006. A notice of the claimant's claim was sent to the employer on April 20, 2006 at the employer's correct address and the same address as reflected on the employer's appeal. The notice was timely received by the employer. The notice indicated that a protest of the claimant's claim was due by May 1, 2006. However, as shown at Department Exhibit One which is the employer's protest, the employer's protest was faxed to Iowa Workforce Development unemployment insurance services and received by it on May 5, 2006 making the employer's protest four days late. The employer's protest was dated May 5, 2006. The only reason for the delay in the filing of the protest was that the chief executive officer, Rick Johnson, one of the employer's witnesses, was gone out of town for a conference from April 18 to April 21, 2006 and then was in management meetings from April 24 to April 28, 2006. During the management meetings Mr. Johnson returned to his residence each day but did not go to the employer's office. Mr. Johnson returned to his office on May 1, 2006 and began to go through his mail. Mr. Johnson had a great deal of mail and did not note the notice of claim until May 5, 2006 when he prepared the protest and faxed the same to Iowa Workforce Development. Mr. Johnson has an administrative assistant who could have, and should have, referred the notice of claim to the medical director, Dr. Manisha Kalra, the employer's other witness. However, the administrative assistant did not. The employer also has a chief financial officer who could have handled the employer's protest.

REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely protest of the claimant's claim or, if not, whether the employer established good cause for such failure. The employer's protest was not timely and the employer has not demonstrated good cause for delay in the filing of the protest and such protest should, therefore, not be accepted. Therefore, the administrative law judge does not have jurisdiction to reach the remaining issues.
2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach this issue.
3. Whether the claimant is overpaid unemployment insurance benefits. The administrative law judge does not have jurisdiction to reach this issue.

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 Iowa Code section 96.6(2) 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 the 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. Iowa Department of Job Service, 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 that portion of Iowa Code section 96.6(2) which deals with the time limit in which to file a protest after notification of the filing of the claim has been mailed.

The administrative law judge concludes that the employer has the burden to prove that its protest was timely or that it had good cause for a delay in the filing of its protest. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence either that its protest was timely or that it had good cause for a delay in the filing of its protest. As shown at Department Exhibit One and as set out in the Findings of Fact, the employer's protest was four days late. The only reason for the delay in the filing of the protest was that the chief executive officer, Rick Johnson, one of the employer's witnesses, was not in the office from April 18, 2006 through April 28, 2006. Mr. Johnson returned to the office on May 1, 2006. If Mr. Johnson had prepared the protest and faxed it that day the protest would have been timely. He did not do so. Mr. Johnson testified that he had a great deal of mail to go through and did not discover the notice of claim until May 5, 2006 when he prepared the protest and faxed the same to Iowa Workforce Development. The administrative law judge does not believe that it should take five days to locate a critical mailing and address it. Even assuming that Mr. Johnson was the only person who could prepare and fax the protest, an assumption which the administrative law judge does not make, the administrative law judge concludes that the delay of five days to prepare and fax the protest is unreasonable and the employer has not demonstrated good cause for a delay in the filing of the protest. Mr. Johnson could have quickly gone through the mail locating those letters that seemed critical and addressed them immediately but he did not do so.

The administrative law judge also concludes that Mr. Johnson was not the only person who could have prepared and faxed the protest. Mr. Johnson testified that he had an administrative assistant who could have, and should have, referred the notice of claim to the medical director, Dr. Manisha Kalra, the employer's other witness. However, the administrative assistant did not do so. The administrative law judge also notes the employer had a chief financial officer who could also have prepared and faxed the protest but the chief financial officer also did not. An employer such as this should make definite arrangements to have critical mail addressed promptly even, and especially, during the absence of the chief executive officer. The employer here did not.

For all of the reasons set out above, the administrative law judge concludes that the employer has not demonstrated by a preponderance of the evidence, good cause in the delay in filing its protest. There is no evidence that the delay in filing the protest was due to any error or misinformation on the part of Iowa Workforce Development or to any delay or other actions by the U. S. Postal Service. Accordingly, the administrative law judge concludes that the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law and further failed to establish or demonstrate good cause for such delay. Therefore, the administrative law judge concludes that the employer's protest should not be accepted and that the administrative law judge lacks jurisdiction to make a determination with respect to the other issues presented including the separation of employment.

DECISION:

The representative's decision of May 19, 2006, reference 03, is affirmed. The employer has failed to file a timely protest and has not demonstrated good cause for the delay in the filing of such protest and the protest is, therefore, not accepted. The decision of the representative shall stand and remain in full force and effect. The claimant, Kimberly D. Dodson, is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kkf/pjs