

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**PAIGE A BAKER**

Claimant

**APPEAL NO: 13A-UI-07411-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MCKENZIE CHECK ADVANCE OF IA LLC**

Employer

**OC: 03/10/13**

**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

McKenzie Check Advance of Iowa, L.L.C. (employer) appealed a representative's June 18, 2013 decision (reference 01) that concluded Paige A. Baker (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 29, 2013. The claimant participated in the hearing. Danny Robinson of TALX Employer Services appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision affirming the representative's decision and allowing the claimant benefits.

**ISSUE:**

Should the employer's protest be treated as timely?

**OUTCOME:**

Affirmed. Benefits allowed.

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective March 10, 2013. A notice of claim was mailed to the employer's last-known address of record on March 15, 2013. The employer's representative received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by March 25, 2013. The protest was not treated as filed until it was submitted on May 21, 2013 along with a challenge to a quarterly statement of charges, which is after the date noticed on the notice of claim.

Robinson is an unemployment state consultant for TALX Employer Services. On March 25 he composed a letter of protest to be submitted to the state of Iowa in response to the notice of the claimant's claim. Robinson is not in the St. Louis operating center for TALX, but he submitted the letter he composed for printing in the St. Louis office. The computer system indicates that the letter was printed, but Robinson was unable to provide information as to whether in fact the

letter was printed properly, whether it was properly placed into a mailing envelope, and most importantly, whether the letter was turned over to the possession of the United States Postal Service.

### **REASONING AND CONCLUSIONS OF LAW:**

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative's decision states 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 court has held that this statute clearly limits the time to do so, and 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 the *Beardslee* court controlling on the portion of Iowa Code §96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did have a reasonable opportunity to file a timely protest.

871 IAC 24.35(2) provides in pertinent part:

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.

The employer has not shown that the delay for not complying with the jurisdictional time limit was due to department error or misinformation or delay or other action of the United States Postal Service. While there is a presumption of delivery for a properly addressed piece of mail that has been turned over to the possession of the Postal Service, in order for that presumption to attach, so as to eliminate the potential for the error to have been on the part of the Postal Service or the Agency, the employer must first show that the protest letter was in fact properly turned over to the possession and control of the Postal service; the employer has not satisfied this requirement. Since the employer filed the protest late without any legal excuse, the employer did not file a timely protest. Since the administrative law judge concludes that the protest was not timely filed pursuant to Iowa Code § 96.6-2, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the protest and the reasons for the claimant's separation from employment, regardless of the merits of the employer's protest. 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).

**DECISION:**

The June 18, 2013 (reference 01) decision is affirmed. The protest in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided the claimant is otherwise eligible.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

ld/pjs