

**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**

**RICHARD S AYALA
706 S 19TH ST
FT DODGE IA 50501**

**IOWA FALLS ROOFING COMPANY
133 E ROCKSYLVANIA AVE
PO BOX 157
IOWA FALLS IA 50126-0157**

**Appeal Number: 04A-UI-03777-RT
OC: 01-18-04 R: 01
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, Iowa Falls Roofing Company, filed a timely appeal from an unemployment insurance decision dated April 1, 2004, reference 01, allowing unemployment insurance benefits to the claimant, Richard S. Ayala, because the employer's protest regarding the claimant's separation from work was not timely and could not be accepted. After due notice was issued, a telephone hearing was held on April 28, 2004 with the claimant participating. The employer did not call in a telephone number, either before the hearing or during the hearing, where any witnesses could be reached for the hearing, as instructed in the notice of appeal. Consequently, the employer did not participate in the hearing. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant. Department Exhibit 1 was admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective January 18, 2004. A notice of the claimant's claim was sent to the employer on January 30, 2004. The notice of the claim was received by the employer since the employer eventually filed a protest. The deadline for a protest, if any, was February 9, 2004 as shown at Department Exhibit 1. However, the employer's protest was mailed to Iowa Workforce Development in an envelope bearing a postmark of February 26, 2004, 17 days late. The protest was not certified. The notice of the claimant's claim was sent to the same post office box address as contained on the employer's appeal. The employer did not participate in the hearing and provide reasons for the delay in the filing of its 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 is not timely and the employer did not demonstrate good cause for a delay in the filing of the protest and such protest, therefore, should not be accepted. As a consequence, 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 that issue.
3. Whether the claimant is overpaid unemployment insurance benefits. The administrative law judge does not have jurisdiction to reach that 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 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. 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 a 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 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 delay in the filing of its protest. The employer did not participate in the hearing to provide evidence as to the timeliness of its protest or for any reasons for a delay in its protest. The protest itself, at Department Exhibit 1, indicates that it was mailed to the employer on January 30, 2004 and was due February 9, 2004. However the protest was not mailed to Iowa Workforce Development until February 26, 2004, 17 days late, all as shown on the envelope which is part of Department Exhibit 1. The employer must have received the notice because the protest was filed eventually by the employer. The protest was not dated or certified. The administrative law judge also notes that the notice was sent to the employer at the same post office box address as shown on the employer's appeal. 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 protest should not be accepted and that he lacks jurisdiction to make a determination with respect to the nature of the other issues presented including the separation of employment.

DECISION:

The representative's decision of April 1, 2004, reference 01, is affirmed. The employer has failed to file a timely protest and has not demonstrated good cause for a delay in filing 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, Richard S. Ayala, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

tjc/b