

**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**

**PENNY A VAUGHAN
2266 SW WOODBURY LN
ANKENY IA 50021**

**NCS PEARSON INC
c/o FRICK UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-09586-H2T
OC: 08-08-04 R: 02
Claimant: Respondent (2R)**

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 of Protest

STATEMENT OF THE CASE:

Employer filed a timely appeal from the August 26, 2004, reference 02, decision that allowed benefits and found employer's protest untimely. After due notice was issued, a hearing was held on September 29, 2004. The claimant did participate. The employer did participate through Kimberly McLucas, a representative with TALX UC eXpress. Department's Exhibit D-1 was received.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on August 12, 2004. The

employer did protest by mail on August 23, 2004 and it was received at IWD on August 25, 2004 in the mail but the envelope was not retained.

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 administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law because for the protest to have been received by August 25 from St. Louis, Missouri, employer's representative obviously mailed the protest by the due date on August 23, 2004. IWD has failed to maintain the envelope in which the protest was mailed and, without it, employer's representative's statement in the appeal letter is considered credible.

DECISION:

The August 26, 2004, reference 02, decision is reversed. The employer has filed a timely protest.

tkh\pjs

REMAND: The separation issue is remanded for an initial review and determination.