

**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**

**MARY RODRIGUEZ
1111 13TH ST
DES MOINES IA 50316**

**G & K SERVICES COMPANY
C/o TALX UC EXPRESS
PO BOX 283
ST LOUIS MO 63166-0283**

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ATTORNEY AT LAW
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**Appeal Number: 04A-UI-09589-AT
OC: 08/08/04 R: 02
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 – Timely Protest

STATEMENT OF THE CASE:

G & K Services Company filed a timely appeal from an unemployment insurance decision dated August 26, 2004, reference 01, which allowed benefits to Mary Rodriguez upon a finding that the employer's protest was untimely. After due notice was issued, a telephone hearing was held on October 14, 2004 with Ms. Rodriguez participating and being represented by Laura Lockard, attorney at law. Customer Service Representative Kimberly McLucas of TALX UC eXpress participated on behalf of the employer. Exhibit One and Exhibit D-1 were admitted into evidence.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: On August 11, 2004 Iowa Workforce Development mailed a notice of claim to G & K Services Company in care of its representative, TALX UC eXpress. The due date for a response as listed on the notice of claim was August 23, 2004. TALX UC eXpress responded by fax. The document was received by the Agency on August 25, 2004 at 10:59 a.m. TALX UC eXpress had prepared a protest letter on August 23, 2004. Since it was to be bulk mailed, TALX UC eXpress has no envelope or other evidence to establish that the protest was postmarked not later than August 23, 2004. The Agency has not received a protest on this claim except the fax received on August 25, 2004.

REASONING AND CONCLUSIONS OF LAW:

The question before the administrative law judge is whether the evidence establishes that the employer filed a timely protest. It does not.

Iowa Code section 96.6-2 gives an employer ten days from the date of a notice of claim to file a protest. The Supreme Court of Iowa has ruled that a similar time limit relating to appeals contained in Iowa Code section 96.6-2 is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). The administrative law judge believes that the Supreme Court would follow the same reasoning if it were to consider the jurisdictional consequences of an untimely protest.

Documents submitted to the Agency by mail are considered to be filed as of the date of the postmark. While the evidence establishes that this protest should have been postmarked on August 23, 2004, it does not establish that it was actually postmarked by that date. Neither the employer nor the Agency can produce such a document. Documents submitted to the Agency by any other method are considered to be filed only when they come into the Agency's possession. As noted in the Findings of Fact, the faxed copy of the protest was not received by the Agency until August 25, two days after the due date.

Absent evidence of a timely protest, the administrative law judge concludes that he lacks jurisdiction to rule on the separation issue.

DECISION:

The unemployment insurance decision dated August 26, 2004, reference 01, is affirmed. The protest was untimely. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

kjf/b