

**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**

**BRIAN M REED
507 E RAILROAD LOT 1
WAYLAND IA 52654**

**BAZOOKA FARM STAR INC
1901 E WASHINGTON
PO BOX 869
WASHINGTON IA 52353**

**Appeal Number: 04A-UI-01012-AT
OC: 12-14-03 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 – Timely Protest

STATEMENT OF THE CASE:

Bazooka Farm Star, Inc. filed a timely appeal from an unemployment insurance decision dated January 27, 2004, reference 01, which allowed benefits to Brian M. Reed upon a finding that the employer's protest was untimely. After due notice was issued, a telephone hearing was held February 19, 2004 with Production Manager Roger Milks participating for the employer. Mr. Reed participated on his own behalf. Exhibits D-1 and D-2 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 December 23, 2003, Iowa Workforce Development mailed a Notice of Claim to Bazooka Farm Store, Inc. notifying the employer that Brian M. Reed had filed a claim for unemployment insurance benefits and instructing the employer that any response was due not later than January 2, 2004. The notice was mailed to the company's home office in Washington, Iowa. On December 31, 2003, the company faxed the Notice of Claim to Controller Larry D. Culver, who worked at a different location. Mr. Culver did not find the Notice of Claim until January 3, 2004 and promptly faxed a response to the Agency.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the protest can be accepted as timely. It cannot. Iowa Code Section 96.6-2 gives employer's ten days from the date Notice of Claim to file a protest. The Supreme Court of Iowa has ruled that the time limits contained in Iowa Code Section 96.6-2 are jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely protest, neither the Agency nor this administrative law judge has legal authority to consider the issues raised by the employer.

The evidence in this record establishes that the employer received the Notice of Claim at its home office in time to file a timely protest but did not do so for internal reasons. While court decisions and provisions in the Iowa Administrative Code allow additional time for filing documents if the fault is that of the Agency or the US Postal Service, the delay here was because of the employer. Under these circumstances, the administrative law judge concludes that the appeal was untimely and that he lacks jurisdiction to rule on the merits of the case.

DECISION:

The unemployment insurance decision dated January 27, 2004, reference 01, is affirmed. The employer's protest was untimely. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

tjc/b