

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

**JASON PEASE
1842 ½ CENTRAL A-4
DUBUQUE IA 52001**

APPEAL NO: 08A-UI-05176-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LABOR READY MIDWEST INC
ATTN PAYROLL TAX DEPARTMENT
PO BOX 2910
TACOMA WA 98401-2901**

APPEAL RIGHTS:

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:

***Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319***

**☉ TALX UCM SVCS INC
PO BOX 66864
ST LOUIS MO 63166-6864**

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.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

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.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON PEASE
Claimant

APPEAL NO: 08A-UI-05176-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

**OC: 03/16/08 R: 04
Claimant: Respondent (1)**

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Labor Ready Midwest, Inc. (employer) appealed an unemployment insurance decision dated May 19, 2008, reference 03, which held it failed to file a timely protest regarding the claimant's separation of employment on May 12, 2008 and no disqualification of unemployment insurance benefits was imposed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 12, 2008. The claimant did not comply with the hearing notice instructions and did not call in to provide a telephone number at which he could be contacted, and therefore, did not participate. The employer participated through Jody Gartner, Customer Service Representative. Exhibit D-1 was admitted into evidence. Based on the evidence, the arguments of the party, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

The issue is whether the employer's protest was timely?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on April 30, 2008, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from

the initial mailing date. The employer did not file its protest until May 13, 2008, which is after the ten-day period had expired.

REASONING AND CONCLUSIONS OF LAW:

Ref 21

Another portion of this same Code section 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. IDJS, 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 this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and the delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the employer has failed to effect a timely protest pursuant to Iowa Code Section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. 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 unemployment insurance decision dated May 19, 2008, reference 03, is affirmed. The employer has failed to file a timely protest, and the decision of the representative shall stand and remain in full force and effect.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/