

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**FELICIA S NORMAN**  
Claimant

**APPEAL NO. 09A-UI-00566-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SISTER SARAH'S**  
Employer

**OC: 12/21/08 R: 02**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated January 12, 2009, reference 05, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on January 29, 2009. Proper notice of the hearing was given to the parties. The claimant did not participate in the hearing and she has requalified since the separation from the employer. Nancy Straub participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

**ISSUE:**

Did the employer file a timely protest of the claim?

**FINDINGS OF FACT:**

A notice of claim was mailed to the employer's address of record on December 24, 2008, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of January 5, 2009. The employer's protest was faxed on January 7, 2009, which was after the time period for protesting had expired. The owners of the business, Thomas and Nancy Straub, were out of town for the holidays and got back home on January 4. Nancy Straub did not open the accumulated mail until January 7, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, complying with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning also applies to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code section 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The unemployment insurance decision dated January 12, 2009, reference 05, is affirmed. The employer failed to file a timely protest, and the unemployment insurance decision concluding the claimant is qualified for benefits remains in effect.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css