

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CAROLYN J RANKIN
Claimant

APPEAL NO. 10A-UI-07546-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN LEGION #363
Employer

**OC: 04/11/10
Claimant: Respondent (1)**

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

American Legion Post #363 filed a timely appeal from an unemployment insurance decision dated May 11, 2010, reference 01, that allowed benefits to Carolyn J. Rankin upon a finding that the employer's protest was untimely. Due notice was issued for a telephone hearing to be held August 6, 2010. With the consent of the parties, it was held instead on August 10, 2010 with Ms. Rankin participating. Jack Anderson and Chris Anderson participated for the employer. Exhibit D-1 was admitted into evidence.

ISSUE:

Does the administrative law judge have jurisdiction to rule on the merits of this case?

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: Carolyn J. Rankin filed a claim for unemployment insurance benefits effective April 11, 2010. On April 13, 2010, the agency mailed a notice of claim to the employer in care of its accountant. The notice of claim stated that a response was due not later than April 23, 2010. The employer filed a protest on April 27 or 28, 2010. The accountant did not make certain that finance officer Jack Anderson was aware of the notice of claim until after April 23, 2010.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the administrative law judge has jurisdiction to rule on the merits of this case. He does not. Iowa Code section 96.6-2 gives an employer ten days from the date of the mailing of a notice of claim to file a response with the agency known as a protest. The Supreme Court of Iowa has ruled that time limits 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, the administrative law judge has no jurisdiction to rule on the merits of a case. Additional time may be granted, but only if the delay is the fault of the U.S. Postal Service or the agency. See 871 IAC 24.35.

The evidence in the record establishes that the protest was not filed within the time limit set by statute and that the delay was miscommunications between the accountant and the employer. Since the delay was not the fault of the U.S. Postal Service or Iowa Workforce Development, no additional time may be granted.

DECISION:

The unemployment insurance decision dated May 11, 2010, reference 01, is affirmed. The protest was not timely. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs