

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JERMEY A WILLIAMS
Claimant

APPEAL NO. 07A-UI-04687-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES - MARSHALLTOWN
Employer

**OC: 04/08/07 R: 02
Claimant: Respondent (2)**

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Temp Associates – Marshalltown filed an appeal from the April 30, 2007, reference 04, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on May 23, 2007. Claimant Jermey Williams did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. Judy Rebik, Manager represented the employer. The administrative law judge received employer's Exhibit One and Department Exhibits D-1 into evidence.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.
Whether good cause existed for a late filing of the protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to the employer's address of record on April 12, 2007. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was April 23, 2007. The notice of claim was received at the employer's place of business on April 13. At that time, Manager Judy Rebik drafted the employer's protest and faxed the protest to Iowa Workforce Development. The protest form was received by Iowa Workforce Development on April 13. Though Ms. Rebik submitted the protest form in a timely fashion, Ms. Rebik had forgotten to check the box on the protest form that indicated the claimant had voluntarily quit. When Ms. Rebik did not hear further from Iowa Workforce Development regarding the employer's protest, she contacted her local Workforce Development Center on April 26. At that time, Ms. Rebik learned that she had erroneously failed to mark the box indicating the claimant quit. Ms. Rebik resubmitted the protest form the same day.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

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.

The evidence in the record establishes that the employer filed a timely protest form. The fact that the protest form was incomplete did not make the protest form itself untimely. Because the protest form was timely, the administrative law judge has authority to rule on the merits of the protest. The administrative law judge hereby relieves the employer's account of liability on the claim. The claimant will suffer no adverse impact based on this decision because he has

requalified for benefits by earning 10 times his weekly benefit amount since separating from this employment.

DECISION:

The claims representative's April 30, 2007, reference 04, decision is reversed. The employer's protest was timely. The employer's account will not be charged for benefits paid to the claimant. The claimant is eligible for benefits, provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs