

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MINDY J DAVIDSON**  
Claimant

**APPEAL NO. 08A-UI-06404-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WILLIAMSBURG MCDONALDS**  
Employer

**OC: 06/15/08 R: 03  
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

Williamsburg McDonald's filed an appeal from a representative's decision dated July 3, 2008, reference 03, which held that the protest concerning Mindy Davidson's separation on January 1, 2007, was not timely filed. After due notice was issued, a hearing was held by telephone on July 28, 2008. Although duly notified, the claimant did not participate. The employer participated by Lindsay Detra, human resource manager.

**ISSUE:**

The issue in this matter is whether the employer filed a timely protest as required by law.

**FINDINGS OF FACT:**

The administrative law judge, having 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 June 17, 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 effect a protest until June 30, 2008, which is after the ten-day period had expired. The employer initially had some difficulty in gaining information on this claim because a previous manager had left the company and because of flood conditions at the headquarters' office. The company's human resource manager attempted to send the form in via facsimile on June 27, 2008, repeatedly. However, the human resource manager could not get the fax to go through from the location where it was sent. Although the employer had the ability to deposit the form with the U.S. Postal Service and have it postmarked that date, the employer did not exercise that option.

**REASONING AND CONCLUSIONS OF LAW:**

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.

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).

In this case, the employer has not shown any good cause for not complying with the jurisdictional time limit. The form itself states, "The response to Workforce Development Department must be faxed or postmarked by the due date shown above." Although the employer was experiencing difficulty faxing the protest from one of its stores, a readily available option of depositing the protest with the U.S. Postal Service and having it postmarked prior to the expiration of the due date would have sufficed. The administrative law judge concludes that the employer was given adequate notice of this method of protest but did not utilize it. The employer thus has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any protest regarding the separation from employment

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).

**DECISION:**

The representative's decision dated July 3, 2008, reference 02, 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. Benefits are allowed, provided Mindy Davidson satisfies all other conditions of eligibility.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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