

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KYLE R BAUMAN

Claimant

APPEAL NO. 11A-UI-11842-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ACTION STAFFING SERVICES INC

Employer

OC: 07/24/11

Claimant: Respondent (1)

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

Action Staffing Services, Inc. filed a timely appeal from an unemployment insurance decision dated September 2, 2011, reference 02, that allowed benefits to Kyle R. Bauman which ruled that the employer's protest was untimely. After due notice was issued, a telephone hearing was held October 27, 2011 with Mr. Bauman participating. Accounting and Human Resources Manager Rita Weaver participated for the employer. Exhibit D-1 was admitted into evidence.

ISSUE:

Has the employer filed a timely protest?

FINDINGS OF FACT:

Kyle R. Bauman filed a claim for unemployment insurance benefits effective July 24, 2011. On August 8, 2011, the agency mailed a notice of claim to Action Staffing Services, Inc. The notice stated that a response was due August 18, 2011. The employer did not respond until August 30, 2011. The delay occurred because the person responsible for filing the response was out of the office.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 gives an employer ten days from the date a notice of claim is mailed to send a response known as a protest to the agency. The Iowa Supreme Court has ruled that the time limit in the statute is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979).

The evidence establishes that the response was not filed within the time limit set by statute. It also establishes that the delay was not the fault of the agency or the U. S. Postal Service. From this the administrative law judge concludes that he lacks jurisdiction to rule on the merits of the separation.

DECISION:

The unemployment insurance decision dated September 2, 2011, reference 02, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The employer cannot be relieved of charges.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs