

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**DAVID POLO  
18996 – 480<sup>TH</sup> LN  
CHARITON IA 50049**

**GENUINE PARTS CO  
DBA NAPA AUTO PARTS  
2999 CIRCLE 75 PKWY  
ATLANTA GA 30339**

**GENUINE PARTS CO  
DBA NAPA AUTO PARTS  
c/o TALX UC EXPRESS  
PO BOX 283  
ST LOUIS MO 63166-0283**

**Appeal Number: 04A-UI-00217-RT  
OC: 11-23-03 R: 03  
Claimant: Respondent (1)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**STATE CLEARLY**

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

**Section 96.6-2 – Initial Determination (Timeliness of Protest)**

**STATEMENT OF THE CASE:**

The employer, Genuine Parts Company, doing business as NAPA Auto Parts, filed a timely appeal from an unemployment insurance decision dated December 24, 2003, reference 03, allowing unemployment insurance benefits to the claimant, David Polo, because the employer's protest of the claimant's claim for benefits was not timely. After due notice was issued, a telephone hearing was held on January 28, 2004 with the claimant participating. Carolyn Miller, Human Resources Manager, participated in the hearing for the employer. Sarah King of TALX UC eXpress testified for the employer concerning the timeliness of protest issue. Department Exhibit 1 was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, including Department Exhibit 1, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective November 23, 2003. A notice of the claim was sent to the employer on December 1, 2003. That notice indicated that a protest, if any, was due by December 11, 2003. As noted on Department Exhibit 1, the employer's protest was sent to Iowa Workforce Development in an envelope bearing a postmark of December 18, 2003, seven days late. The protest was late because the employer changed unemployment insurance compensation representatives from Sheakley Uniservice, Inc. to TALX UC eXpress. Although Sheakley Uniservice, Inc. had promised to send all forms to TALX UC eXpress immediately upon receiving them, they did not do this. This change was effective or supposed to be effective October 1, 2003. Sarah King, of TALX UC eXpress, testified that a change of address was submitted to Iowa Workforce Development on or about September 29, 2003. However, TALX UC eXpress never received an acknowledgement from the State of Iowa or Iowa Workforce Development. TALX UC eXpress customarily receives acknowledgements of changes of address but did not receive one from Iowa or Iowa Workforce Development until January 2, 2004. Ms. King testified that she did not find it strange that TALX UC eXpress received nothing in the mail concerning this employer for two months. TALX UC eXpress did not check as to why it had not received an acknowledgement from Iowa Workforce Development sooner.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely protest of the claimant's claim or, if not, whether the employer established good cause for such failure. The employer's protest is not timely and the employer has not demonstrated good cause for delay in the filing of its protest. Therefore, the administrative law judge does not have jurisdiction to reach the remaining issues.
2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach this issue.
3. Whether the claimant is overpaid unemployment insurance benefits. The administrative law judge does not have jurisdiction to decide this issue.

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 Iowa Code Section 96.6-2 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 the 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. Iowa Department of Job Service,

276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on that portion of Iowa Code Section 96.6-2 which deals with the time limit in which to file a protest after notification of the filing of the claim has been mailed.

The administrative law judge concludes that the employer has the burden to prove that its protest was timely or that it had good cause for a delay in the filing of its protest. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence that its protest was timely or that it had good cause for the delay in the filing of its protest. On its face, as shown at Department Exhibit 1, the employer's protest is not timely as set out in the findings of fact. The reason given for the delay in the filing of the protest was that the previous representative of the employer for unemployment insurance matters, Sheakley Uniservice, Inc., did not immediately forward documents to the new representative, TALX UC eXpress. This is in no way the fault of Iowa Workforce Development or the U.S. Postal Service, but it is a matter between the employer and its two representatives. Sarah King of TALX UC eXpress testified that TALX UC eXpress also submitted a change of address to Iowa Workforce Development on or about September 29, 2003. This may be but it does not appear that Iowa Workforce Development received such change of address. The administrative law judge notes that often such mailings get lost in the mail. TALX UC eXpress itself claims occasionally that documents from Iowa Workforce Development are not received in the mail and obtains new hearings as a result. Ms. King further testified that states send acknowledgements of change of addresses but TALX UC eXpress never received one from Iowa or Iowa Workforce Development until January 2, 2004. This is four months after TALX UC eXpress is alleged to have sent the change of address. Ms. King said she did not find it strange that she received nothing from Iowa Workforce Development in two months. The administrative law judge believes that a representative carefully monitoring for its employers would note that no acknowledgement had been received and would inquire further. It must have been within the contemplation of TALX UC eXpress that documents would have to be forwarded from the prior representative, Sheakley Uniservice, Inc., because Ms. King testified there was that agreement between Sheakley Uniservice, Inc. and TALX UC eXpress. It is beyond the control of Iowa Workforce Development to have Sheakley Uniservice, Inc. or any other representative forward documents to an employer or another employer's representative. Accordingly, the administrative law judge is constrained to conclude that the employer has failed to demonstrate by a preponderance of the evidence that it had good cause for a delay in filing its protest. Therefore, the administrative law judge concludes that the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law and further failed to establish or demonstrate good cause for such delay, and, as a result, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the other issues presented, including the separation of employment.

#### DECISION:

The representative's decision of December 24, 2003, reference 03, is affirmed. The employer has failed to file a timely protest and has not demonstrated good cause for a delay in filing such protest and the protest is, therefore, not accepted. The decision of the representative shall stand and remain in full force and effect. The claimant, David Polo, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

tjc/b