

**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**

**Appeal Number: 05A-UI-06205-DT
OC: 05/22/05 R: 03
Claimant: Respondent (2/R)**

**STEPHEN L PULLEN
APT E5
285 ROBINS RD
HIAWATHA IA 52233**

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, 4th 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.

**TM1 STOP LLC
1 QUAIL CREEK CIR
NORTH LIBERTY IA 52317**

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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

TM1 Stop, L.L.C. (employer) appealed a representative's June 9, 2005, decision (reference 02) that concluded Stephen L. Pullen (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 30, 2005. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. John Burchert appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective May 22, 2005. A notice of claim was mailed to the employer's last known address of record on May 24, 2005. The employer received the notice within a few days thereafter. The notice contained a warning that a protest must be postmarked or received by the Agency by June 3, 2005. The protest was not filed until it was transmitted by fax on June 5, 2005, which is after the date noticed on the notice of claim. Mr. Burchert, the employer's chief operating officer, completed the protest form on June 3, 2005, and placed it into the fax machine with the number dialed to transmit it to the Agency. After he pressed the button to transmit the protest, he left the machine to its own devices. No one else retransmitted the protest after Mr. Burchert left the machine. The fax transmission was not completed until Sunday, June 5, 2005, at 5:31 p.m., presumably because the Agency's fax machine was busy each previous time the employer's machine redialed in order to transmit the document.

REASONING AND CONCLUSIONS OF LAW:

The issue in this matter is whether the employer filed a timely protest. The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code section 96.6-2. Another portion of Iowa Code section 96.6-2 that deals with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after the 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 has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code section 96.6-2 that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes the employer's representative placed a completed protest into a fax machine within the time for filing a timely protest. The administrative law judge concludes that the failure to have the protest successfully transmitted to the Agency within the time prescribed by the Iowa Employment Security Law was due to error, delay or other action of the Agency pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code section 96.6-2. This matter is remanded to the Claims Section to investigate the separation issue and determine whether the employer's account will or will not be subject to charges based on benefits the claimant may receive.

DECISION:

The June 9, 2005, (reference 02) decision is reversed. The protest in this case was timely. The matter is remanded to the Claims Section for investigation and determination of the separation issue.

ld/kjw