

**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**

**KYLE J GRANDON
1014 W 4TH
WATERLOO IA 50702**

**EIKLENBORG SALVAGE INC
12732 G AVE
APLINGTON IA 50604**

**Appeal Number: 05A-UI-03593-RT
OC: 02-27-05 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, 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.

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 – Initial Determination (Timeliness of Protest)

STATEMENT OF THE CASE:

The employer, Eiklenborg Salvage, Inc., filed a timely appeal from an unemployment insurance decision dated March 29, 2005, reference 02, allowing unemployment insurance benefits to the claimant, Kyle J. Grandon, because the employer's protest was not timely. After due notice was issued, a telephone hearing was held on April 26, 2005 with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. 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 witness 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 February 27, 2005. A notice of the claimant's claim was sent to the employer on March 4, 2005 and received by the employer before March 11, 2005. The notice of claim indicated that the deadline for a protest, if any, was March 14, 2005. However, the employer faxed its protest to Iowa Workforce Development on March 22, 2005 making it eight days late. The protest is dated March 21, 2005. The employer's protest appears at Department Exhibit 1. The reason for the delay in the filing of the protest was that the employer was a small business operated by Michael Eiklenborg, President and his wife and they were getting ready for a vacation. They were quit busy. They left for vacation on March 11, 2005 and did not return until March 20, 2005. They had had their mail stopped at the post office. However, the notice was received by them prior to their leaving on March 11, 2005 but they did not pay attention to the deadline because they were busy getting ready for vacation. When the employer returned from vacation, it immediately prepared a protest and faxed the same to Workforce Development. Pursuant to his claim for unemployment insurance benefits filed effective February 27, 2005, the claimant has received no unemployment insurance benefits. Although records show that the claimant is eligible for benefits, he has made no weekly claims and has received no such benefits.

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 can demonstrate good cause for such failure. The administrative law judge concludes that the employer's protest was not timely and the employer has not demonstrated good cause for the delay in the filing of its protest and, therefore, the protest should not be accepted and 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 reach 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.

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.

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 the 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 either that its protest was timely or that it had good cause for the delay in the filing of its protest. On its face as set out in the findings of fact and as shown at Department Exhibit 1, the employer's protest is eight days late. The only reason given by the employer for the delay in the filing of its protest was that the employer was a small business and the employer's witness, Michael Eiklenborg, President, and his wife, were the only persons who managed the business and that they were very busy in preparing for a vacation which started on March 11, 2005. However, Mr. Eiklenborg testified that they had received the notice of claim prior to their leaving on vacation on March 11, 2005 but they did not pay attention to the deadline because they were busy tying up matters related to their business and getting ready for vacation. When they returned from vacation on March 20, 2005, a protest was prepared and faxed to Iowa Workforce Development. The administrative law judge is constrained to conclude that there is no evidence here that the delay in filing its protest was due to any Iowa Workforce Development Department error or misinformation or a delay or other action of the U.S. Postal Service. The employer received the notice in a timely fashion and was just too busy to complete it. The administrative law judge is not without sympathy for the employer here who is a small business and understands the need for vacation. However, the administrative law judge is constrained to conclude under the facts here that the employer has not demonstrated good cause for the delay in the filing of its protest. Accordingly, 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 has further failed to establish or demonstrate good cause for such a delay. Therefore, the administrative law judge concludes that the protest should not be accepted and he lacks jurisdiction to make a determination with respect to the other issues presented including the separation of employment.

DECISION:

The representative's decision of March 29, 2005, reference 02, is affirmed. The employer has failed to file a timely protest and has not demonstrated good cause for the delay in the filing of 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, Kyle J. Grandon, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The administrative law judge notes that the claimant thus far has received no unemployment insurance benefits since opening a claim for such benefits and records do not show any weekly claims.

tjc/pjs