

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JENNIFER M HARRINGTON
Claimant

APPEAL NO. 10A-UI-04505-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**Original Claim: 02/21/10
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer, Wal-Mart, filed an appeal from a decision dated March 16, 2010, reference 04. The decision found the employer's protest was not timely. After due notice was issued, a hearing was held by telephone conference call on May 7, 2010. The claimant participated on her own behalf. The employer participated by Assistant Manager Brian Kay and was represented by TALX in the person of Ryan Flanery. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the protest is timely.

FINDINGS OF FACT:

The claimant's notice of claim was mailed to employer's address of record on February 25, 2010, and received by employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed, or returned not later than ten days from the initial mailing date. Employer did not file a protest until March 9, 2010, which is after the ten-day period had expired. No good-cause reason has been established for the delay.

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.

The administrative law judge concludes that the employer has failed to protest within the time period prescribed by the Iowa Employment Security Law. *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 4.35(2).* The administrative law judge further concludes that the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks

jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

DECISION:

The representative's decision dated March 16, 2010, reference 04, 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.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw