

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBBIE D CARTER**  
Claimant

**APPEAL NO. 11A-UI-13994-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APRIL MARGARET STUMPF**  
Employer

**OC: 09/25/11  
Claimant: Respondent (2)**

Section 96.6-2 – Timeliness of Protest  
871 IAC 24.35(2) – Protest Delay  
Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated October 20, 2011, reference 05, that it failed to file a timely protest from the claimant's separation from employment on July 23, 2010, and benefits are allowed. A hearing was held on November 21, 2011. The claimant did not participate. April Stumpf, Owner, participated for the employer. Employer Exhibit One was received as evidence.

**ISSUES:**

Whether the protest is timely.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds that: The claimant filed an unemployment claim effective September 25, 2011. The department mailed a notice of claim to the employer's address of record on October 4 with a protest due date of October 14. The postal service delivered the notice to the employer next door neighbor who has the same last name. The neighbor did not deliver the notice to the employer until the evening of October 17. The employer protest was faxed to the department on October 18, 2011.

The claimant failed to respond to the hearing notice.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 this same Code section 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 this 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. IDJS, 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 this portion of that same Iowa Code § which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer affected a timely protest to the claimant's claim, as the delay was due to postal service delivery error.

**DECISION:**

The decision of the department representative dated October 20, 2011, reference 05, is reversed. The employer filed a timely protest regarding the claimant's employment separation on July 23, 2010.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs