

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JUSTIN L ETTER
Claimant

APPEAL NO. 07A-UI-03454-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORLEY WAREHOUSING INC
Employer

**OC: 03/11/07 R: 03
Claimant: Respondent (1)**

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

Worley Warehousing, Inc. filed a timely appeal from an unemployment insurance decision dated March 30, 2007, reference 05, which allowed benefits to Justin L. Etter but which declined to relieve the employer of charges for those benefits upon a finding that the employer's protest had not been filed within the time limits set by law. No hearing was set in this matter because the employer's appeal contained the following sentence, "We **do not** wish to participate in the appeals hearing." This decision is based on information in the administrative file and in the employer's appeal letter.

ISSUE:

Does the administrative law judge have jurisdiction to rule on the separation issue?

FINDINGS OF FACT:

Having examined all matters of record, the administrative law judge finds: Justin L. Etter filed a claim for unemployment insurance benefits effective March 11, 2007. On March 13, 2007 the Agency notified Worley Warehousing, Inc. of the claim and advised the employer that its response, if any, must be filed not later than March 23, 2007. The employer responded on March 28, 2007. Its response does not indicate any delay in receiving the notification from the Agency.

REASONING AND CONCLUSIONS OF LAW:

The legal question is whether the employer has filed a timely protest. It has not.

Iowa Code section 96.6-2 gives employer ten calendar days from the mailing of a notice of claim to file a protest. The time may be extended if, and only if, the tenth day falls on a Saturday, Sunday or legal holiday or if delivery of the notice is delayed due to the fault of the U. S. Postal Service or Iowa Workforce Development. There is no evidence in this record that any of those circumstances apply to the present case.

The Supreme Court of Iowa has ruled that the time limits set in Iowa Code section 96.6-2 are jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely appeal, the administrative law judge has no jurisdiction to rule on the merits of the case.

The administrative law judge concludes from the evidence in this record that Worley Warehousing, Inc. did not respond to the Agency within the time limits set by law and that the administrative law judge therefore has no jurisdiction to determine whether it should be relieved of charges for benefits paid to Justin L. Etter.

DECISION:

The unemployment insurance decision dated March 30, 2007, reference 05, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. Worley Warehousing, Inc. cannot be relieved of charges for those benefits.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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