

**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**

**JASON D BARNEY  
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WINTERSSET IA 50273**

**JAMES B POULSON  
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5155 NW 57TH AVE  
JOHNSTON IA 50131**

**Appeal Number: 04A-UI-00978-MT  
OC: 12/14/03 R: 02  
Claimant: Respondent (2)**

**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, 4<sup>th</sup> 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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Employer appealed the representative's decision dated January 27, 2004, reference 01, that concluded it failed to file a timely protest regarding the claimant's separation of employment on October 21, 2003, and no disqualification of unemployment insurance benefits was imposed. A telephone hearing was scheduled and held on February 18, 2004, pursuant to due notice. Employer participated by James Poulson, Owner and Michelle Poulson, Owner. Claimant failed to respond to the hearing notice and did not participate. Exhibit One was admitted into evidence.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: Claimant's notice of claim was mailed to the employer's address of record on December 23, 2003, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. Employer did not effect a protest until January 7, 2004, which is after the ten-day period had expired. Employer was on vacation through January 5, 2004. The protest was filed promptly and well before ten days had expired after actual receipt. No one was at the business who could have dealt with the issue on the day the protest was delivered.

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.

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 section 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 shown any good cause for not complying with the jurisdictional time limit. Actual receipt of the protest was delayed while the owners were on vacation. Therefore, the administrative law judge holds the protest regarding the separation from employment as timely.

The administrative law judge concludes the employer effected a timely protest within the time period prescribed by the Iowa Employment Security Law, and the delay was due to delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the employer has effected a timely protest pursuant to Iowa Code Section 96.6-2, and the department has 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 decision of the representative dated January 27, 2003, reference 01, is reversed. The employer has filed a timely protest, and the decision of the representative is reversed. This matter is remanded to the claims section for a determination of claimant's eligibility.

mdm/kjf