

**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**

**SHARON L PRATT
316 S 14TH AVE
MARSHALLTOWN IA 50158**

**ALLEY AUTOMOTIVE
710 W MADISON
MARSHALLTOWN IA 50158**

**Appeal Number: 05A-UI-00151-RT
OC: 05-23-04 R: 02
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, Alley Automotive, filed a timely appeal from an unemployment insurance decision dated December 27, 2004, reference 02, allowing unemployment insurance benefits to the claimant, Sharon L. Pratt, because the employer's protest was not timely. After due notice was issued, a telephone hearing was held on January 20, 2005, with the claimant participating. Robert Halverson, Owner, participated in the hearing for the employer. Department Exhibit One 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 witnesses and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective May 23, 2004 and reopened her claim for benefits effective September 5, 2004. A notice of the claimant's reopened claim was sent to the employer on September 9, 2004 as shown at Department Exhibit One, which is the employer's protest. The notice of the claim was received by the employer in a timely fashion. The notice indicated that the deadline for a protest, if any, was September 20, 2004. However, the employer attempted to protest the claimant's claim by protest faxed to Iowa Workforce Development on December 15, 2004 as shown at Department Exhibit One. The protest is dated December 15, 2004. The reason given by the employer for the delay in filing his protest was that the claimant had called the employer and stated that she would be filing for unemployment insurance benefits for only one week and that the employer should not worry about it. The employer did not file a protest and did not worry about it until the employer talked to its accountant who informed the employer that the employer should protest the claimant's claim for benefits. The employer then did so.

Pursuant to her claim for unemployment insurance benefits filed effective May 23, 2004 and reopened effective September 5, 2004, the claimant has received unemployment insurance benefits in the amount of \$331.00 since reopening her claim for benefits and separating from the employer herein. The claimant received significant benefits prior to being hired by the employer but they are not relevant here. The employer received a quarterly statement of charges for the third quarter of 2004 but it showed no charges to the employer's account. When the claimant informed the employer that the employer should not worry about her claim, she did not intend that the employer not file a protest but that simply the employer should not worry about it because based upon her past experience as an Iowa Workforce Development employee, she knew that the employer would not be charged with her benefits because the employer was not in her base period. This employer was not charged.

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 employer's protest is not timely and the employer has not demonstrated good cause for the delay in the filing of its protest and, as a consequence, the employer's protest should not be accepted. Therefore, 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.

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. When 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 and 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 its protest was timely or that it had good cause for a delay in the filing of its protest. The administrative law judge is constrained to conclude 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 a delay in the filing of its protest. On its face as shown at Department Exhibit One and as set out in the Findings of Fact, the employer's protest is almost three months late. The reason that the protest was late was that the employer was called by the claimant and told not to worry about her claim. The employer then did not file a protest until it was advised to do so by its accountant. The employer then filed a protest of its claim. The employer timely received the notice of claim sent to it on September 9, 2004 and very well could have filed a protest at that time. The employer chose not to do so because the claimant informed the employer not to worry about it. The claimant informed the employer of this because she knew from her past work experience with Iowa Workforce Development that the employer would not be charged with the claimant's two weeks of partial benefits which she received after her separation from the employer, because the employer was not in her base period. The claimant was correct. The employer may be charged for future benefits claimed by the claimant for a new benefit year but only in relationship to the wages earned by the claimant and that is merely a hypothetical issue at this time. The claimant credibly testified that she did not tell the employer not to file a protest and did not intend that the employer would fail to file a protest based upon her statement but only that the employer should not worry about it. Under these circumstances, the administrative law judge is constrained to conclude that the employer's delay in filing his protest was not a reasonable delay. The claimant was correct at least insofar as she told the employer, or implied to the employer, that his account would not be charged for those two partial weeks of benefits. Even the employer seemed to concede that the claimant had not specifically told him not to file a protest. There is no evidence that the delay in filing the employer's protest was due either to the U. S. Postal Service or Iowa Workforce Development. Accordingly, the administrative law judge concludes that the employer has 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 employer's protest should not be accepted and that 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 December 27, 2004, reference 02, is affirmed. The employer has failed to file a timely protest and has not demonstrated good cause for a 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, Sharon L. Pratt, is entitled to receive the unemployment insurance benefits which she has received, provided she is otherwise eligible.

pjs/b