

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CASSANDRA J LANG**  
Claimant

**APPEAL NO. 13A-UI-04230-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**KINSETH HOTEL CORPORATION**  
Employer

**OC: 03/10/13**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated March 28, 2013, reference 02, that concluded its protest could not be accepted because it was not filed timely. A telephone hearing was held on May 14, 2013. Proper notice of the hearing was given to the parties. The claimant failed to participate in the hearing. Amy Lewis participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

**ISSUE:**

Did the employer file a timely protest of the claim?

**FINDINGS OF FACT:**

A notice of claim was mailed to the employer's address of record on March 15, 2013, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of March 25, 2013. The employer faxed a notice of claim on March 25, 2013, that did not protest the claimant but instead said, "We believe a separation has occurred—details to follow."

The employer's protest was faxed on March 26, 2013, which was after the time period for protesting had expired and stated it was an "amended response." The employer alleged the claimant had abandoned her job.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits.

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. On the issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer.

The employer's initial fax was not a protest of the claim. Reporting that separation had occurred is not the same as protesting the claim. The employer's subsequent protest was after the time period prescribed by Iowa Code Section 96.6-2 had expired. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

**DECISION:**

The unemployment insurance decision dated March 28, 2013, reference 02, is affirmed. The decision that the employer's protest was untimely remains in effect.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

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