

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EARL D ROZENDAAL**  
Claimant

**APPEAL NO. 12A-UI-04230-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PRISM PROJECTION INC**  
Employer

**OC: 03/25/12**  
**Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the April 13, 2012, reference 02, decision that allowed benefits and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on May 7, 2012. The claimant participated. Kathleen Janover, Office Manager, represented the employer. Exhibit One and Department Exhibit D-1 were received into evidence.

**ISSUE:**

Whether there is good cause to deem the employer's late protest as timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: On March 27, 2012, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was April 6, 2012. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. Responding to notices of claim was part of Office Manager Kathleen Janover's responsibilities. Ms. Janover was out of the office on business for over a week and her absence from the workplace included the week of April 1-7, 2012. During Ms. Janover's absence, the employer did not delegate responsibility for responding to correspondence from Iowa Workforce Development. Indeed, the other person with a key to the employer's post office box was also out of the office. Ms. Janover returned to work on April 9, 2012 and collected the notice of claim from the post office box. On April 10, 2012, Ms. Janover completed the employer's protest information on the notice of claim form and faxed the form to Workforce Development. The Unemployment Insurance Service Center date-stamped the protest as being received on April 10, 2012.

## REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

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 the court 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 protest at issue in this matter was filed on April 10, 2012, when the Unemployment Insurance Service Center received the protest by fax.

The evidence in the record establishes that the employer's protest was untimely. The evidence establishes that the employer had a reasonable opportunity to file a timely protest, but did not do so because the employer failed to delegate responsibilities for such matters to another employee during the office manager's extended absence from the workplace. The evidence establishes that the employer's failure to file a timely protest was not attributable to Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, the administrative law judge lacks jurisdiction to disturb the Agency's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, or the employer's liability for benefits. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall stand and remain in full force and effect.

**DECISION:**

The Agency representative's April 13, 2012, reference 02, decision is affirmed. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall stand and remain in full force and effect.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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