

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JIMMY D MCCOMBS**

Claimant

**APPEAL NO. 07A-UI-06399-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CASEYS MARKETING COMPANY**

Employer

**OC: 12/10/06 R: 02  
Claimant: Respondent (1)**

Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

Casey's Marketing Company filed an appeal from the June 19, 2007, reference 01, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on July 30, 2007. Claimant Jimmy McCombs participated. Lori Ceselski of TALX UCM Services represented the employer. Casey's representative, Corlissa Lawler, was not available at the telephone number she had provided for the hearing. Department Exhibit D-1 and Employer Exhibits One and Two were received into evidence.

**ISSUES:**

Whether the employer's protest of the claim for benefits was timely.

Whether good cause existed for a late filing of the protest.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: On December 12, 2006, Iowa Workforce Development mailed a Notice of Claim 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 December 22, 2006. The employer's representative of record is TALX UCM Services. TALX received the Notice of Claim on December 14, 2006. On December 14, TALX Hearing Representative Lori Ceselski prepared the employer's protest of the claim for benefits. Ms. Ceselski is stationed in Omaha, Nebraska. Ms. Ceselski used the Pinnacle software program to transmit the letter she had drafted in Omaha to St. Louis, Missouri. Ordinarily the letter would print in St. Louis and be mailed out from the TALX facility in St. Louis. Ms. Ceselski does not know who would have processed her letter in St. Louis and did not confirm that a protest letter actually made it into the mail. The greater weight of the evidence fails to establish that a protest made its way to the United States Postal Service. Iowa Workforce Development did not receive the December 14, 2006 protest letter until June 11, 2007, when it was received as part of another mailing from TALX. The copy of the envelope in which the June 8 letter and the protest letter arrived does not bear a legible postmark. After Ms. Ceselski generated a letter by computer on December 14, 2006, neither Ms. Ceselski, nor anyone else at TALX or Casey's Marketing

Company took any steps to follow up on the protest until June 2007, when TALX generated a letter in response to a quarterly statement of charges. The TALX letter, dated June 8, 2007, was received at Iowa Workforce Development on June 11. Attached to the June 8 letter was a copy of the letter Ms. Ceselski had generated by computer on December 14, 2006.

**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 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 not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The evidence in the record establishes that the employer failed to file a timely protest. The greater weight of the evidence indicates that the protest generated by TALX never made its way into the mail until June 8, 2007, when it was attached to another letter dated June 8, 2007. The employer's protest is deemed filed on June 8, 2007. The weight of the evidence fails to establish that the letter generated by Ms. Ceselski in Omaha ever printed in St. Louis. The evidence indicates that TALX and/or Casey's failed to take reasonable steps to ensure that a protest letter left the TALX facility in St. Louis. The evidence establishes that the employer's failure to file a timely protest was not attributable to error or misinformation on the part of Iowa Workforce Development or delay or other action attributable to the United States Postal Service. Accordingly, the administrative law judge lacks jurisdiction to make a 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 June 19, 2007, reference 01, 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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