

**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**

**RONALD G JOHNSON
3764 BUCKEYE CT
DUBUQUE IA 52001**

**ALLIED WASTE NORTH AMERICA INC
C/O ADP UCM THE FRICK CO
PO BOX 66744
ST LOUIS MO 63166**

**Appeal Number: 05A-UI-01075-JTT
OC: 12/26/04 R: 04
Claimant: Respondent (2R)**

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 - Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed a timely appeal from the January 20, 2005, 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 February 16, 2005. The claimant did not participate. The employer did participate through Stacey Lampe, ADP Claim Service Representative. Department's Exhibit D-1 through D-4 were received into evidence.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to ADP's address of record on December 30, 2004. The notice of claim contains a warning that any protest must be postmarked, faxed or returned by the due

date set forth on the notice, which was January 10, 2004. ADP did not receive the notice until January 10, 2005 at approximately 5:00 p.m. ADP's mailroom then scanned the document into their computer system. On January 11, Ms. Lampe received the claim at her workstation, and immediately contacted the employer for additional information regarding the claimant's separation from employment. On January 12, the employer provided the appropriate separation information to ADP. On January 12, Ms. Lampe completed the protest form and a letter to accompany the form. ADP mailed the protest on January 12.

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 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's representative did not receive the notice of the claim until the end of the business day on January 10, 2005, the date the protest was due. Neither the employer nor ADP appears to bear any responsibility for ADP's late receipt of the notice of claim. Instead, it appears the United States Postal Service was delayed in delivering the notice of the claim to ADP as a result of the increase in the volume of mail it processes during the Christmas season. The late delivery of the notice of the claim to ADP deprived ADP and the employer a reasonable opportunity to submit a timely protest of the claim. The administrative law judge concludes that the protest was timely.

DECISION:

The January 20, 2005, reference 01, decision is reversed. The employer's protest was timely. The separation issue is remanded to the claims section for adjudication.

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