

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATRICK S BRADY
Claimant

APPEAL NO. 07A-UI-03795-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANAMA TRANSFER INC
Employer

**OC: 03/18/07 R: 03
Claimant: Respondent (1)**

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

Panama Transfer, Inc. filed a timely appeal from an unemployment insurance decision dated April 5, 2007, reference 03, that allowed benefits to Patrick S. Brady upon a finding that the Agency had no jurisdiction to relieve the employer of charges because employer's protest was untimely. After due notice was issued, a telephone hearing was held on April 27, 2007 with President Dean Kloewer participating for the employer. Exhibit D-2, the protest filed by the employer, was admitted into evidence. The claimant did not respond to the hearing notice.

ISSUE:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, the administrative law judge finds: Patrick S. Brady filed a claim for unemployment insurance benefits effective March 18, 2007. On March 20, 2007 the Agency mailed a Notice of Claim to Panama Transfer, Inc. The Notice advised the employer that its response was due not later than March 30, 2007. The employer filed its protest on April 3, 2007.

REASONING AND CONCLUSIONS OF LAW:

The issue here is whether the administrative law judge has authority to relieve the employer of charges for benefits. This turns on whether the employer filed a timely protest.

Iowa Code section 96.6-2 gives an employer ten days from the date of mailing to file a response to the Notice of Claim. The Supreme Court of Iowa has ruled that the time limit in that section of the statute is jurisdictional. See Franklin v. Iowa Department of Job Service, 277 N.W.2d 877, 881 (Iowa 1979). In the absence of a timely protest, the administrative law judge has no jurisdiction to grant the relief requested by the employer.

Mr. Kloewer testified that either he was unaware of the due date or that there had been a delay in the delivery of the mail. In light of the equivocal testimony, the administrative law judge

concludes that the employer has not established by a preponderance of the evidence that the delay in filing the protest was the fault of the U. S. Postal Service. No relief can be granted.

DECISION:

The unemployment insurance decision dated April 5, 2007, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided he is otherwise eligible. The employer cannot be relieved of charges.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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