

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CASEY J JONES**  
Claimant

**APPEAL NO: 11A-UI-14520-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAHLE TENNEX NORTH AMERICA INC**  
Employer

**OC: 10/09/11  
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed a representative's November 4, 2011 determination (reference 02) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant did not respond to the hearing notice or participate in the hearing. Jodi Allen, the human resource manager, appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the employer did not file a timely protest.

**ISSUE:**

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of October 9, 2011. On October 14, 2011, the Department mailed a notice of claim to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until October 24, 2011 to respond to the notice or protest the claimant's receipt of benefits.

Allen is the only employee responsible for unemployment insurance matters. She was out of the office for two weeks, October 17 through 28. When she is gone, no one goes through her mail. Allen returned to work on October 31. It took her until November 2 to open up the notice of claim, complete it, and fax the completed form to the Department on November 2, 2011.

After the claimant's employment ended on January 4, 2011, he worked for another employer and earned ten times his weekly benefit amount. Administrative records indicate the claimant is not currently eligible to receive benefits, because the reasons for his employment separation with the subsequent employer do not qualify him to receive benefits.

**REASONING AND CONCLUSIONS OF LAW:**

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). Another portion of Iowa Code § 96.6(2) dealing with timeliness of an appeal from a representative's decision states 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 has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979).

The reasoning and holding of the *Beardslee* court is considered controlling on the portion of Iowa Code § 96.6(2) which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts do not indicate when the employer received the notice of claim because Allen was not in the office October 17 through 28.

Even though Allen is the human resource manager, another employee could have looked through the mail when she was gone for two weeks to see if there was anything time sensitive or had a deadline to complete. This was did not occur.

The employer did not establish a legal excuse for filing a late protest on November 2 instead of on or before October 24, 2011. 871 IAC 24.35(2). The evidence shows the employer filed a late protest because procedures are not in place when Allen is away from work for an extended time. Since the employer did not file a timely protest and did not establish a legal excuse for filing a late appeal, the Appeals Section does not have legal jurisdiction to relieve the employer's account from charge.

**DECISION:**

The representative's November 4, 2011 determination (reference 02) is affirmed. The employer did not file a timely protest or establish a legal excuse for filing a late protest. The Appeals Section does not have jurisdiction to relieve the employer's account from charge.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw