

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**THOMAS A PEDERSEN**  
Claimant

**APPEAL NO. 10A-UI-17177-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STREAM INTERNATIONAL INC**  
Employer

**OC: 06/27/10**  
**Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

Stream International, Inc. (employer) appealed a representative's December 8, 2010 decision (reference 02) that concluded Thomas A. Pedersen (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on February 3, 2011. Both the claimant and the employer responded to the hearing notice to participate in the hearing, but at the scheduled time for the hearing it was determined that neither the claimant nor the employer's witness had any knowledge regarding the only issue on the hearing notice, whether the employer's protest was timely. The parties conceded that the administrative law judge would need to make a determination based upon a review of the available information. Based on a review of the available information and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

Should the employer's protest be treated as timely?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective June 27, 2010. A notice of claim was mailed to the employer's representative, TALX UCM Services, Inc. (TALX), on July 6, 2010. The employer's representative received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by July 16, 2010. No protest was received until December 1, 2010, when TALX sent communication to the Agency regarding a third quarter 2010 statement of charges assessing charges for the claimant's claim against the employer's account. With that December 1 communication was a copy of a letter on TALX letterhead dated July 12, 2010 asserting that it was a response to the notice of claim indicating that the employer was protesting, to which was attached a copy of the notice of claim which had been sent to TALX on July 6. The Agency representative who received the December 1 correspondence from TALX reviewed the Agency records regarding the claimant's claim and found that there was no protest received from TALX regarding the

claimant in July. The representative therefore issued the decision in this case on December 8 concluding that the employer had not made a timely protest.

In the employer's representative's appeal of this decision, there was a generic assertion that TALX had made a timely protest made in July. However, other than the existence of the July 12 letter, no evidence was provided that a representative of the employer actually placed a properly addressed protest into the custody of the United States Postal Service or successfully transmitted such a protest to a proper fax number for the Agency within the time allowed.

### **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 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 administrative law judge considers the reasoning and holding of the Beardslee court 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. Compliance with the protest provisions is jurisdictional unless the facts of a case show that the notice was invalid. Beardslee, 276 N.W.2d 373, 377 (Iowa 1979); see also In re Appeal of Elliott, 319 N.W.2d 244, 247 (Iowa 1982). Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did have a reasonable opportunity to file a timely protest.

871 IAC 24.35(2) provides in pertinent part:

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.

The employer is bound by the action or inaction of its agent and representative. The employer and the agent/representative were on notice that the only issue for consideration in this proceeding was the timeliness of the employer's protest, but has failed to provide evidence that would create any presumption that the failure to receive the protest was due to something other than an error or failure on the part of the agent/representative. The employer has not shown that the delay in having a protest filed within the jurisdictional time limit was due to Agency error or misinformation or delay or other action of the United States Postal Service. Since the employer filed the protest late without any legal excuse, the employer did not file a timely protest. Since the administrative law judge concludes that the protest was not timely filed pursuant to Iowa Code § 96.6-2, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the protest and the reasons for the claimant's

separation from employment, regardless of the merits of the employer's protest. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979) and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

**DECISION:**

The December 8, 2010 (reference 02) decision is affirmed. The protest in this case was not timely, and the decision of the representative remains in effect. Benefits are allowed, provided the claimant is otherwise eligible.

---

Lynette A. F. Donner  
Administrative Law Judge

---

Decision Dated and Mailed

ld/kjw