

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRETT L PERRY
Claimant

APPEAL NO. 10A-UI-04809-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

AEROTEK INC
Employer

OC: 10/25/09
Claimant: Respondent (1)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated March 16, 2010, reference 01, that it failed to file a timely protest from the claimant's separation from employment on February 22, 2010, and benefits are allowed. A hearing was held on May 12, 2010. The claimant participated. JoAnn Matthes, TALX Representative, and Angie Kudron, Account Manager, participated for the employer. Employer Exhibits One and Two was received as evidence.

ISSUES:

Whether the protest is timely.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds that: The claimant separated from employment on February 22, 2010. After the claimant filed an unemployment claim, the department mailed a notice of claim to the employer's address of record on February 24. The employer forwarded the claim to TALX on March 2nd in order to protest. Representative Matthes signed the protest on March 8 that is the deadline date. At 7:52 p.m., Matthes forwarded a protest letter with the notice of claim to its mail center for processing. The mail center placed the documents in a US Priority Mail envelope that was delivered to the post office and postmarked on March 9, 2010.

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 administrative law judge concludes that the employer failed to file a timely protest to the claimant's claim.

The employer protest was not within the ten-day period required by law. The protest deadline for postmark was March 8, and it was one day late. The delay was not due to department or post office error.

DECISION:

The decision of the department representative dated March 16, 2010, reference 01, is affirmed. The employer failed to file a timely protest regarding the claimant's employment separation on February 22, 2010, and benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs