

**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**

**Appeal Number: 05A-UI-01426-RT  
OC: 12-26-04 R: 03  
Claimant: Respondent (5)**

**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, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

**ALFRED CROSSON  
901 S 21<sup>ST</sup>  
CENTERVILLE IA 52544**

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.

**JEF-SCOT METAL INDUSTRIES INC  
926 N LAKE ST  
BOYNE CITY MI 49712-1185**

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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 – Initial Determination (Timeliness of Protest)

STATEMENT OF THE CASE:

The employer, Jef-Scot Metal Industries, Inc., filed a timely appeal from an unemployment insurance decision dated February 1, 2005, reference 01, allowing unemployment insurance benefits to the claimant, Alfred Crosson, because the employer's protest was not timely. After due notice was issued, a telephone hearing was held on February 24, 2005, with the claimant not participating. The claimant did not call in a telephone number, either before the hearing or during the hearing, where he and/or any of his witnesses could be reached for the hearing, as instructed in the notice of appeal. Florrie Moore, of Professional Staffing, Inc., a representative of the employer, participated in the hearing for the employer. Department Exhibit One was admitted into evidence. The administrative law judge takes official notice of Iowa Workforce Development Department unemployment insurance records for the claimant.

#### FINDINGS OF FACT:

Having heard the testimony of the witness and having examined all of the evidence in the record, including Department Exhibit One, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits effective December 26, 2004. A notice of the claim was sent to the employer on December 28, 2004. That notice indicated that a protest was due by January 7, 2005. However, the employer's protest was faxed to Iowa Workforce Development on January 10, 2005, making the protest three days late. The protest itself as shown at Department Exhibit One indicates that it was completed and dated January 10, 2005. The employer received the notice no later than January 5, 2005 and faxed it to its representative, Florrie Moore, of Professional Staffing, Inc., on that date. Because Ms. Moore handles over 200 accounts and has 30 such protests a day, she was too busy to get out the protest immediately and she was gone from her office on Friday, January 7, 2005. When she returned to her office on Monday, she prepared the protest and faxed the same to Iowa Workforce Development. The claimant was separated from his employment on October 21, 2003.

#### REASONING AND CONCLUSIONS OF LAW:

The questions presented by this appeal are as follows:

1. Whether the employer filed a timely protest of the claimant's claim or, if not, whether the employer can demonstrate good cause for such failure. The administrative law judge concludes that the employer's protest was not timely and that the employer has not demonstrated good cause for delay in the filing of its protest and such protest should, therefore, not be accepted. The administrative law judge further concludes that he does not have jurisdiction to reach the remaining issues.
2. Whether the claimant's separation from employment was a disqualifying event. The administrative law judge does not have jurisdiction to reach that issue.
3. Whether claimant is overpaid unemployment insurance benefits. The administrative law judge does not have jurisdiction to reach that issue.

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 Iowa Code section 96.6-2 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 the 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. Iowa Department of Job Service, 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 that portion of Iowa Code section 96.6-2 which deals with the time limit in which to file a protest after notification of the filing of the claim has been mailed.

The administrative law judge concludes that the employer has the burden to prove that its protest was timely or that it had good cause for delay in the filing of its protest. The administrative law judge concludes that the employer has failed to meet its burden of proof to demonstrate by a preponderance of the evidence either that its protest was timely or that it had good cause for delay in the filing of its protest. The protest, on its face, indicates that it is three days late as set out in the findings of fact and as shown at Department Exhibit One. The employer's representative for unemployment insurance matters and its witness for the hearing, Florrie Moore, of Professional Staffing, Inc., testified that she is the representative for the employer for unemployment insurance matters and that the reason for the delay in filing the protest was that she was very busy handling 200 accounts and sending out 30 such protests per day. She testified that the notice of claim was not received by the employer until January 5, 2005 because that is when the employer faxed the notice to her. However, the employer could have had the notice before that date and merely faxed it to her on that date. In any event, Ms. Moore received the notice on January 5, 2005 and had that day and the next two days after to prepare a protest and fax it to Iowa Workforce Development. She did not do so. She testified that she did not do so because she was busy. The administrative law judge understands how individuals can be busy but does not find that this is an excuse for a delay in filing of the protest. There is no evidence of any wrongful conduct or misinformation on the part of Iowa Workforce Development or the U.S. Postal Service. Ms. Moore testified that she was gone on Friday, January 7, 2005, the day the protest was due but again that is not the fault of Iowa Workforce Development or the U.S. Postal Service. In fact, Ms. Moore testified that it was her mistake. The administrative law judge does not mean to make light of the reasons for the delay in the filing of protest and understands that individuals can be busy. However, the administrative law judge must note that this matter is very important in as much as it is jurisdictional and deals with the actual authority for the administrative law judge to decide other issues in this appeal. Accordingly, the administrative law judge is constrained to conclude that the employer and its representative have not demonstrated good cause for a delay in the filing of its protest. Therefore, the administrative law judge concludes that the employer has failed to effect a timely protest in the time period prescribed by the Iowa Employment Security Law and has further failed to demonstrate or establish good cause for such delay. Therefore, the administrative law judge concludes that the employer's protest should not be accepted and that he lacks jurisdiction to make determination with respect to the other issues presented.

#### DECISION:

The representative's decision dated February 1, 2005, reference 01, is modified. The employer has failed to file a timely protest and has not demonstrated good cause in delay of filing of such protest and the protest is, therefore, not accepted. The decision of the representative shall stand and remain in full force and effect except to the extent that the claimant separated from his employment on October 21, 2003 and not October 21, 2004. The claimant, Alfred Crosson, is entitled to receive unemployment insurance benefits, provided he is otherwise eligible.

sc/tjc