

**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**

**TASHA M POULIN  
1501 - 4<sup>TH</sup> AVE E  
SPENCER IA 51301**

**JUNGJOHAN ENTERPRISES INC  
24310 - 182<sup>ND</sup> ST  
SPIRIT LAKE IA 51360**

**Appeal Number: 06A-UI-00849-SWT  
OC: 12/18/05 R: 01  
Claimant: Respondent (1)**

**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.**

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.

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 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 13, 2006, reference 04, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on February 8, 2006. Proper notice of the hearing was given to the parties. The claimant failed to participate in the hearing. Cory Jungjohan participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

A notice of claim was mailed to the employer's address of record on December 27, 2005, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of January 6, 2006. The employer's

protest was faxed on January 10, 2006, which was after the time period for protesting had expired. The owner of the business, Cory Jungjohnan, had completed the protest but neglected to fax it in right way because of the press of his business duties.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code section 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The unemployment insurance decision dated January 13, 2006, reference 04, is affirmed. The employer failed to file a timely protest, and the unemployment insurance decision concluding the claimant is qualified for benefits remains in effect.

saw/kjw