

**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**

**LISA A DUDOCK
2010 GARFIELD ST
CLINTON IA 52732-2530**

**MOULDED FIBRE TECHNOLOGY
1521 WINDSOR DR
CLINTON IA 52732**

**Appeal Number: 06A-UI-07454-JTT
OC: 06/18/06 R: 04
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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Moulded Fibre Technology filed an appeal from the July 18, 2006, reference 01, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on August 10, 2006. The claimant did not participate. The employer participated through Office Manager Debbie Geronzin. The administrative law judge took official notice of the Agency's administrative file. Department Exhibit D-1 was received into evidence.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to the employer's address of record on June 23, 2006. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due

date set forth on the notice, which was July 3, 2006. The employer received the notice of claim in a timely fashion and before the deadline for protest. Office Manager Debbie Geronzin was the person designated by the employer to respond to unemployment insurance claims. On Sunday, June 25, 2006, Ms. Geronzin's son passed away. Ms. Geronzin returned to work on July 10, 2006. The employer had not made arrangements for someone else to perform Ms. Geronzin's duties while she was absent. Ms. Geronzin completed the protest on July 11. Though the Unemployment Insurance Service Center stamped the protest as being received on July 17, the protest form bears fax information indicating the protest may have been received by Iowa Workforce Development on July 13. Accordingly, the claim was filed July 13.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

871 IAC 24.35(2) provides:

(2) 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 division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the division after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

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 evidence in the record establishes that the protest was untimely. The evidence further establishes that the delay in filing the protest was not attributable to Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. The administrative law judge has the deepest sympathy for Ms. Geronzin and her terrible loss. However, based on the applicable law, the administrative law judge must conclude that he lacks jurisdiction to make a determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, or the employer's liability for benefits. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall stand and remain in full force and effect.

DECISION:

The Agency representative's July 18, 2006, reference 01, decision is affirmed. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall stand and remain in full force and effect.

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