

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RALPH L AMODEO**  
Claimant

**APPEAL NO. 06A-UI-11325-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EDM CORPORATION**  
**EDM EQUIPMENT**  
Employer

**OC: 01/15/06 R: 02**  
**Claimant: Respondent (2)**

Section 96.7-2-a-6 – Employer Not Notified of Claim  
Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

EDM Corporation filed a timely appeal from the November 16, 2006, reference 02, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on December 12, 2006. Claimant Ralph Amodeo participated. Brenda Brown, Office Manager, represented the employer and presented additional testimony from Jeff Mellen, President. The administrative law judge took official notice of the Agency's administrative file. Department Exhibits D-1 and D-2 were received into evidence.

**ISSUE:**

Whether the employer's protest was timely. It was.

**FINDINGS OF FACT:**

On March 8, 2006, the Agency mailed the Notice of Claim concerning the claimant to the employer's address of record. 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 March 20, 2006. The employer did not receive the Notice of Claim. The employer first received notice of the claim for benefits when it received the quarterly Statement of Charges that the Agency mailed to the employer's new address of record on November 9, 2006. The employer submitted its protest of the claim on November 15, 2006. Iowa Workforce Development records indicate that the claimant, Ralph Amodeo, has requalified for benefits by earning ten times his weekly benefit amount through insured work since separating from the employment with EDM.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during

that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

871 IAC 24.35(1) provides:

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

a. If transmitted via the United States postal service or its successor, 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 or its successor, on the date it is received by the department.

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 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.

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 department 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 department 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 department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The evidence in the record establishes that the employer did not receive notice of the claim until it received a quarterly statement of charges. The employer filed its protest of the claim within six days of the mailing of the statement of charges. The protest was timely. Mr. Amodeo has requalified for benefits and is eligible for benefits, provided he is otherwise eligible. The employer's account will be relieved of charges for benefits paid to the claimant.

**DECISION:**

The Agency representative's November 16, 2006, reference 02, decision is reversed. The employer's protest was timely. The claimant has requalified for benefits. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account shall be relieved of charges for benefits paid to the claimant.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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