

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHRISTIAN M DRAPER**  
Claimant

**B.AWAKE INC**  
Employer

**APPEAL 18A-UI-09207-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/05/18**  
**Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest  
Iowa Admin. Code r. 871-24.35 – Date of Submission

**STATEMENT OF THE CASE:**

B.Awake, Inc., Employer, filed an appeal from the August 27, 2018, (reference 02) unemployment insurance decision that found the protest untimely and determined the claimant, Christian M. Draper, was eligible for unemployment insurance benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 21, 2018 at 11:00 a.m. Claimant participated. Employer participated through Larry Janda, president and co-owner. Exhibit D1 was admitted.

**ISSUE:**

Whether the employer filed a timely protest.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to B.Awake, Inc., %Larry Janda, 1271 1st Avenue SE, Cedar Rapids, Iowa on August 7, 2018. (Exhibit D1) That was the employer's correct business address on August 7, 2018. (Janda Testimony)

The owner of B.Awake, Inc. was on vacation from July 30, 2018 until August 17, 2018. (Janda Testimony) All mail received by employer during that time period was collected by employees and placed aside for the owner to review upon his return. (Janda Testimony) Employees do not have authority to open mail addressed to employer. (Janda Testimony) Owner collected the mail on August 18, 2018. (Janda Testimony) When owner returned to work on August 20, 2018, he reviewed the notice of claim and completed the protest. (Janda Testimony) Owner is not certain when he mailed the protest to Iowa Workforce Development. (Janda Testimony)

The Notice of Claim lists a due date of August 17, 2018. (Exhibit D1) The protest was postmarked August 21, 2018 and received by Iowa Workforce Development on August 23, 2018. (Exhibit D1)

## **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the employer's protest was untimely

Iowa Code section 96.6(2) provides:

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.

Iowa Admin. Code r. 871-24.35(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 on 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.

Iowa Admin. Code r. 871-24.35(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 division error or misinformation or to delay or other action of the United States postal service.

Employer's protest was postmarked four days after the due date. The owner's choice not to authorize employees to open employer's mail and the owner's choice to have the business mail held while owner was on vacation were business decisions. Neither of these reasons for delay is attributable to the agency or the United States Postal Service. The employer received the notice on or before the due date, but did not submit it to Iowa Workforce Development until four days after the due date. Therefore, employer's protest is untimely.

**DECISION:**

The August 27, 2018, (reference 02) unemployment insurance decision is affirmed. The employer filed an untimely protest.

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Adrienne C. Williamson  
Administrative Law Judge  
Unemployment Insurance Appeals Bureau  
Iowa Workforce Development  
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Decision Dated and Mailed

acw/rvs