

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ALLEN C CLARK
Claimant

APPEAL NO. 16A-UI-06199-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

A-TEC RECYCLING INC
Employer

OC: 05/08/16
Claimant: Respondent (2/R)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

A-Tec Recycling, Inc. filed a timely appeal from the May 27, 2016 (reference 03) decision which allowed benefits, finding that the employer’s protest was untimely. After due notice was issued, a telephone hearing was held on June 20, 2016. Although notified, the claimant did not participate. The employer participated by Mr. Larry Young, Company President.

ISSUE:

At issue is whether the employer’s protest should be considered timely.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds Allen C. Clark was employed by A-Tec Recycling, Inc. until May 22, 2015, when a separation from employment occurred.

Iowa Workforce Development mailed a notice that a claim had been filed to the employer’s address of record on May 11, 2016. 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. The employer did not receive the Notice of Claim filed until May 24, 2016, when it was delivered late by the U.S. Postal Service. The employer immediately completed the protest and returned it electronically that day.

A-Tec Recycling, Inc. has experienced significant difficulties with receiving mail timely through the U.S. Postal Service and has lodged numerous complaints to postal service management.

REASONING AND CONCLUSIONS OF LAW:

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 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.

The evidence in the record establishes that the employer was denied the opportunity to submit a timely protest on the Notice of Claim, as a result of error on the part of the U.S. Postal Service. The administrative law judge concludes that under the circumstances, the protest is considered timely and that the matter should be remanded for further proceedings.

DECISION:

The representative's decision dated May 27, 2016 (reference 03) is reversed. The employer's protest is considered timely. The issue of the claimant's job separation is remanded to the Claims Division for further proceedings.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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