

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARK A COLLINS
Claimant

APPEAL NO. 11A-UI-12432-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**R J PERSONNEL INC
TEMP ASSOCIATES**
Employer

OC: 08/14/11
Claimant: Respondent (4)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the September 19, 2011, reference 03, decision that allowed benefits and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on October 12, 2011. The claimant participated. Holly Jacobi, account manager, represented the employer. Exhibits One, Two, and Department Exhibit D-1 were received into evidence. The administrative law judge took official notice of the Agency's administrative records concerning wages earned by the claimant since his separation from his employer, which records indicate the claimant has requalified for benefits.

ISSUE:

Whether the employer's protest of the claim for benefits was timely. It was

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On August 17, 2011, Iowa Workforce Development mailed a notice of claim concerning the above 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 August 29, 2011. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. On August 19, 2011, the employer successfully faxed several protests concerning multiple claimants. The faxed materials included a single page pertaining to the above claimant. The other pages of the fax pertaining to the other claimants were processed appropriately, but the single page protest concerning the above claimant was misplaced by the Unemployment Insurance Processing Center staff.

The claimant has requalified for benefits since separating from this employer.

REASONING AND CONCLUSIONS OF LAW:

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.

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.

The evidence in the record establishes that the employer's protest was timely, but was lost by Workforce Development staff. The administrative law judge has jurisdiction to rule upon the issue of the employer's liability for benefits and the claimant's eligibility for benefits. The claimant has requalified for benefits and is eligible for benefits, provided he is otherwise eligible.

The employer's account will not be charged for benefits in connection with the claim that was effective August 14, 2011.

DECISION:

The Agency representative's September 19, 2011, reference 03, decision is modified as follows. The employers protest was timely. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account will not be charged for benefits in connection with the claim that was effective August 14, 2011.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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