

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

COLTON B SIMMERS
Claimant

APPEAL NO. 17A-UI-13102-TN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BOB ZIMMERMAN FORD INC
Employer

OC: 11/12/17
Claimant: Respondent (1)

Iowa Code § 96.6(2) -- Timely of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the December 11 2017, reference 06, decision that allowed benefits to Colton Simmers and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on January 11, 2018. Although duly notified, the claimant did not respond to the hearing notice. The employer participated by Ms. Alberta Tart, Claims Analyst ADP Company. The administrative law judge took official notice of the claimant's administrative file. Employer's Exhibit A was received into the hearing record.

ISSUE:

The issue is whether the employer's protest of the claim for benefits was timely.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: A notice of claim filed by Colton B. Simmers was mailed to the employer's address of record on November 17, 2017 and received by the employer at its address of record in a timely fashion prior to the deadline for protest. On November 27, 2017, the due date for the protest to be received, the employer's representative attempted to send the protest to Iowa Workforce Development by facsimile transmission. An attempt was made to fax the protest to the agency at 12:26 p.m. that day and on two occasions later that day. The facsimile transmissions were not received by Iowa Workforce Development that day.

The following day, November 28, 2017, the employer's representative checked and at that time noticed that the attempts to fax the protest the preceding day had not been successful. The representative of the company then re-faxed the protest on November 28, 2017 and the protest was received by the agency, however, it was not within the ten days allowed by statute.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that the employer did not file its protest within the time period prescribed by the Iowa Employment Security Law. The employer's representative firm attempted to send the protest via facsimile on the due date of November 27, 2017, but did not ensure that the facsimiles were received by the agency. The next day when the company checked the facsimile reports, they learned that the previous faxes had not gone through and re-submitted the protest via facsimile on November 28, 2017. The transmission was successfully completed at that time, however, it was beyond the ten-day statutory time limit.

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(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.

In the case at hand, the representative of the company failed to verify that the facsimiles had been successfully transmitted on the due date. When the company did check the following day and determined that the previous faxes had not been successfully transmitted, the company re-sent the facsimile and it was received by Iowa Workforce Development on that date, but beyond the ten-day statutory limit. Good cause for late filing has not been shown.

DECISION:

The representative's unemployment insurance decision dated December 11, 2017, reference 06, is affirmed. The protest in this case was not timely and the decision of the representative remains in effect.

Terry P. Nice
Administrative Law Judge

Decision Dated and Mailed

rvs/rvs