

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JUSTIN HARTER  
513 WALNUT #11  
ATLANTIC IA 50022**

**ROLAND CLARKSON  
REMODELING CONTRACTORS  
c/o TARBELL  
PO BOX 235  
JOHNSTON IA 50131-0235**

**Appeal Number: 04A-UI-08113-ET  
OC: 07-04-04 R: 01  
Claimant: Respondent (2R)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 2<sup>nd</sup> Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated July 23, 2004, reference 01, that concluded it failed to file a timely protest regarding the claimant's separation from employment on February 12, 2004, and no disqualification of unemployment insurance benefits was imposed. After due notice was issued, a hearing was scheduled and held on August 18, 2004. The claimant did not respond to the hearing notice and did not participate in the hearing. Roland Clarkson, Owner, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted to the record.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's

address of record July 8, 2004. The employer testified it did not receive the notice until July 20, 2004, the day after it was due, and filed its protest July 21, 2004. There are issues regarding the claimant's separation from this employer that have not yet been investigated or adjudicated at the claims level.

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 filed its protest within the time period prescribed by Iowa law because the owner testified he did not receive the notice until July 20, 2004, and filed the protest the following day. Although the notice may have been in the employer's post office box prior to the due date, there is not enough evidence to conclude the employer failed to retrieve its mail in a timely manner and file its protest by the due date. Consequently, the administrative law judge concludes the employer's protest is timely. The issues regarding the claimant's separation from this employer are remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The July 23, 2004, reference 01, decision is reversed. The employer has filed a timely protest. The issues regarding the claimant's separation from this employer are remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

je\kjf