

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BINNIE L MCGUIRK
Claimant

APPEAL 19A-UI-07197-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DARLING INTERNATIONAL INC
Employer

**OC: 03/24/19
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Darling International, Inc., Employer, filed an appeal from the September 4, 2019 (reference 01) unemployment insurance decision that found employer's protest untimely. The parties were properly notified of the hearing. A telephone hearing was held on October 2, 2019, at 2:00 p.m. Claimant did not participate. Employer participated through Tina Thomure, Hearing Representative. Employer's Exhibits 1 – 5 were admitted. Official notice was taken of the administrative record.

ISSUE:

Whether employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to employer on March 27, 2019. Employer received the Notice of Claim on March 30, 2019. The employer submitted its Employer Statement of Protest on April 8, 2019 by faxing it to 515-242-0403. That was the correct number for protests faxed by employer's representative, TALX UCM. The Notice of Claim lists a due date of April 8, 2019. Employer's fax confirmation sheet indicates that the fax was sent successfully on April 8, 2019 at 11:38 a.m. Employer's Statement of Protest was not received by Iowa Workforce Development.

REASONING AND CONCLUSIONS OF LAW:

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

Iowa Code § 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)(a) 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:

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

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 produced a fax confirmation sheet reflecting the protest was successfully faxed to the correct number on the due date. Any delay in Iowa Workforce Development's receipt of the protest was due to technical error at the division – not by any error attributable to employer. Employer's protest was timely.

DECISION:

The September 4, 2019, (reference 01) unemployment insurance decision is reversed. Employer's protest was timely.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

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

acw/rvs