IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

AMALIO Z SOTO
Claimant

APPEAL NO. 07A-UI-09065-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SALEM MANAGEMENT INC
RUDY SALEM EMPLOYMENT AGENCY**
Employer

**OC: 08/.26/07   R: 001
Claimant: Respondent (2)**

Iowa Code § 96.6(2) - Timeliness of Protest

STATEMENT OF THE CASE:

An appeal was filed from the September 19, 2007, reference 03 decision that found the employer's protest untimely. A hearing was scheduled for October 8, 2007. Prior to the hearing being held, it was determined that the protest was timely on its face.

ISSUE:

The issue is whether the protest was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant's Notice of Claim was mailed to the employer's address of record on September 4, 2007. The employer did file its protest by fax after business hours on September 14, 2007.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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.

Simply because the fax was transmitted after business hours on the due date does not render it received the following day. Since correspondence postmarked on the due date is considered received when postmarked even though it was not actually received on the due date; likewise, a fax transmitted on the due date but after business hours is considered received when faxed. The administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law.

DECISION:

The September 19, 2007, reference 03, decision is reversed. The employer has filed a timely protest.

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Beth A. Scheetz
Administrative Law Judge

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Decision Dated and Mailed

bas/css