

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**CLIFFORD J BOWMAN**  
Claimant

**APPEAL NO. 11A-UI-00920-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**M & H ENTERPRISES INC**  
**MAIDPRO**  
Employer

**OC: 12/19/10**  
**Claimant: Respondent (2-R)**

Section 96.6-2 – Timeliness of Protest  
871 IAC 24.35(2) – Protest Delay

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated January 19, 2011, reference 01, that it failed to file a timely protest from the claimant's separation from employment on December 17, 2010, and benefits are allowed. A hearing was held on February 22, 2011. The claimant did not participate. Jay Wolfe, President/Manager, participated for the employer. Employer Exhibits 1 & 2 was received as evidence.

**ISSUES:**

Whether the protest is timely.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony, and having considered the evidence in the record, finds that: The claimant filed an unemployment claim effective December 19, 2010. The department mailed a notice of claim to the old employer's address of record on December 23. The new employer purchased the business from JML Enterprises LLC (er#323111) on November 1, 2010, and it informed a local department field auditor of the business acquisition and address change at that time.

The US Postal Service had received the business address change request, and it forwarded the notice of claim to the employer who received it on January 7, 2011. President/Manager Wolfe faxed the employer protest to the department on that date, and got a confirmation that the transmission was okay.

The department issued the decision on January 19, and the employer appealed on January 24 stating it had submitted a timely protest. The claimant did not respond to the hearing notice.

The department record does not show an employer tax account number for M & H Enterprises Inc., and it does not show taxable wages paid to an employee.

**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.

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.

The administrative law judge concludes that the employer filed a timely protest to the claimant's claim that was not received most probably due to department error.

The employer provided documentary evidence that it faxed a protest to the department on January 7, 2011. Since the employer had previously notified the department of a business acquisition and address change, the notice of claim should have been mailed directly to it. The protest delay is for good cause and attributable to the department.

This matter is remanded to the department tax bureau to determine if a new or successorship tax account has been established for M & H Enterprises Inc., and if payroll contribution tax reports have been received.

**DECISION:**

The decision of the department representative dated January 19, 2011, reference 01, is reversed. The employer filed a timely protest regarding the claimant's employment separation on December 17, 2010.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs