

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIELLE M PEDERSEN
Claimant

APPEAL NO: 12A-UI-07655-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

**FRAUENSHUH HOSPITALITY GROUP MN
FOURTEEN FOODS**
Employer

**OC: 05/27/12
Claimant: Respondent (2)**

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

STATEMENT OF THE CASE:

The employer appealed a department decision dated June 18, 2012, reference 06, that held it failed to file a timely protest regarding claimant's employment separation on August 6, 2011, and which allowed benefits. A telephone hearing was held on July 18, 2012. The claimant did not participate. Jeff Wieland, HR director, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds: The claimant filed an unemployment claim effective May 27, 2012. The department mailed a notice of claim to the employer's address of record on May 30 with a protest due date of June 11. The employer made numerous attempts to fax its protest on June 11, but the department fax machine would not receive it. The employer's fax did go through to the department on June 12.

The claimant failed to respond to the hearing notice.

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.

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 affected a timely protest, as the one-day delay was due to department error. The department failed to make its fax communication system available to the employer when it tried to fax the protest within the ten-day period. The employer had a good cause for the one-day delay due to department error.

DECISION:

The department decision dated June 18, 2012, reference 06, is reversed. The employer filed a timely protest.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/kjw