

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

STEVEN M SWACHHAMER  
1011 GRATIS AVE  
DES MOINES IA 50315-1607

DANREN INC  
BUSINESS CARDS TOMORROW  
1444 ILLINOIS ST  
DES MOINES IA 50314

Appeal Number: 06A-UI-04928-HT  
OC: 04/16/06 R: 02  
Claimant: Respondent (2-R)

**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, 4<sup>th</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.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed a representative's decision dated May 4, 2006, reference 01, that concluded it failed to file a timely protest regarding the claimant's separation of employment on April 14, 2006, and no disqualification of unemployment insurance benefits was imposed. A hearing was scheduled and held on May 23, 2006, pursuant to due notice. The claimant participated on his own behalf. The employer participated by Owner Tammy Danley. Exhibit D-1 was admitted into the record.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses 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 on April 20, 2006, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date.

The employer faxed the protest after the close of business on May 1, 2006. As a result, it was not processed by Iowa Workforce Development Claims Section until May 2, 2006.

The employer's protest indicated the claimant refused an offer of work. From the information submitted with the protest it appears to have been a discharge for refusing to do his assigned duties and not a refusal of a job offer.

#### 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 employer did fax the protest on the actual due date, but due to the lateness of the submission it was not received before the close of the business day for Iowa Workforce Development. However, it still was submitted on the due date and should be accepted as timely.

The issue of the claimant's separation from employment remains to be adjudicated and should be remanded to the Claims Section for determination.

#### DECISION:

The decision of the representative dated May 4, 2006, reference 01, is reversed. The employer did wait until after the close of business on the due date for the protest, but it was faxed on May 1, 2006. It shall be accepted as timely.

The issue of the claimant's separation from employment is remanded to the Claims Section for determination.

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