

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EVERETT PORTER
Claimant

APPEAL NO. 12A-UI-02947-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC
Employer

**OC: 12/11/11
Claimant: Respondent (2R)**

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Labor Ready Midwest Inc. filed an appeal from a representative's decision dated March 14, 2012, reference 02, which held that the protest concerning Everett Porter's separation on October 20, 2011 was not timely filed. After due notice was issued, a hearing was held by telephone on April 9, 2012. The employer participated by Amara Meyer, UI Consultant. Although claimant was notified, he was not available at the telephone number provided.

ISSUE:

At issue in this matter is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

The administrative law judge, 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 December 13, 2011, 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 through its tax representative firm, TALX UC eXpress, protested the claim by facsimile on December 13, 2011 and received a positive fax confirmation that the facsimile had been sent and received at Iowa Workforce Development offices.

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(1) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department.

The evidence in the record establishes that the employer submitted the notice of claim file to its tax representative firm on December 13, 2011 and that the tax representative firm in turn sent a protest of Everett Porter's claim to Iowa Workforce Development via facsimile on December 13, 2011. The evidence in the record shows a positive confirmation that the facsimile had been sent and received by Iowa Workforce Development. The administrative law judge concludes that the protest was timely and that the matter should be remanded for further proceedings.

DECISION:

The agency representative's dated March 14, 2012, reference 02, is reversed. The employer's protest was timely. The matter is remanded to the fact finder for further proceedings.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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