

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LAWRENCE C SEALS

Claimant

APPEAL NO. 07A-UI-05990-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MONARCH MANUFACTURING COMPANY

Employer

**OC: 01/07/07 R: 02
Claimant: Respondent (4)**

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Monarch Manufacturing Company filed an appeal from the June 8, 2007, reference 03, decision that allowed benefits and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on July 2, 2007. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The employer participated through Joseph Ojeda, Hearing Representative. The administrative law judge took official notice of the Agency's record of wage credits earned by the claimant, which record indicates that the claimant has requalified for benefits since separating from the employment. The administrative law judge took official of Agency records that indicate the Agency's protest fax number is 515-281-6208 and that 515-281-0498 is a fax number a claims representative gives to a party if the claims representative needs additional documents to make a decision in connection with a fact-finding interview. Employer's Exhibit One and Department Exhibits D-1 through D-2 are admitted into evidence.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.
Whether good cause existed for a late filing of the protest.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to the employer's address of record on January 11, 2007. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was January 22, 2007. The notice of claim was received at the employer's place of business in a timely fashion, prior to the deadline for protest. On January 22, 2007, ADP representative Arlene Baca faxed a protest to Iowa Workforce Development, but erroneously directed the fax to telephone number 515-242-0498, rather than to the correct fax number, 515-281-6208. The phone number the employer used to submit the fax is a number that claims representatives provide to parties if the claims representative needs additional documents from a party in connection with a fact-finding interview. The fax transmission receipt submitted by the employer shows a successful fax and suggests that the

employer's protest was received by the Unemployment Insurance Service Center on January 22, 2007, albeit at the wrong fax machine.

The claimant has requalified for benefits by earning 10 times his weekly benefits amount from insured work after separating from the employment.

REASONING AND CONCLUSIONS OF LAW:

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.

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 greater weight of the evidence in the record indicates that the employer's protest was received by the Unemployment Insurance Service Center on January 22, 2007. The administrative law judge concludes the protest was timely. In light of the fact that the claimant has requalified for benefits, administrative law judge hereby relieves the employer's account of charges for benefits paid to the claimant. This decision will have no impact on the claimant's eligibility for benefits.

DECISION:

The Agency representative's June 8, 2007, reference 03, decision is modified in favor of the employer. The protest was timely. The employer's account will not be charged for benefits paid to the claimant. The claimant is eligible for benefits, provided he is otherwise eligible.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/pjs