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

ARTHUR E GARRISON
Claimant

APPEAL NO. 14A-UI-00160-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PREFERRED AUTO SALES INC
Employer

OC: 12/01/13
Claimant: Respondent (2R)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Preferred Auto Sales, Inc. filed a timely appeal from the January 3, 2014, reference 01, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on January 29, 2014. The claimant participated. The employer participated by Ms. Jeanette Redmann, Company President.

ISSUE:

At issue in this matter is whether the employer's protest can be treated as timely?

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: On December 3, 2013, Iowa Workforce Development sent a notice that an unemployment insurance claim had been filed by Arthur Garrison to the employer's address of record at 2198 Varnish Tree Avenue, Lockridge, Iowa 52635. Although the Notice of Claim file had been deposited by the Agency with the United States Postal Service allowing sufficient time for its delivery, the Notice was not delivered to the employer's address of record until December 17, 2013, after the due date noticed on the document. The company president, Ms. Redmann, immediately completed the protest and deposited it with the United States Postal Service on December 18, 2013 for return to Iowa Workforce Development. Because the form was not returned to the Agency within the ten-day time period allotted by the statute, the protest was considered to be not timely.

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 evidence in the record establishes that the employer was denied the opportunity to submit a timely protest of the Notice of Claim as a result of delay or other action of the United States Postal Service. The administrative law judge concludes that the protest was timely and that the matter should be remanded by Iowa Workforce Development for further proceedings.

DECISION:

The Agency representative's decision dated January 3, 2014, reference 01, is reversed. The employer's protest is considered timely. The issue of the claimant's job separation is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

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Terence P. Nice
Administrative Law Judge

_____
Decision Dated and Mailed

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