

**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**

**ROBERT G SIMMERS
409 CARTER AVE
OTTUMWA IA 52501**

**SUPREME STAFFING INC
PO BOX 149
OTTUMWA IA 52501-0149**

**Appeal Number: 05A-UI-11116-JTT
OC: 10/02/05 R: 03
Claimant: Respondent (2R)**

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, 4th 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed a timely appeal from the October 25, 2005, reference 03, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on November 14, 2005. The claimant was not available at the telephone number he provided for the hearing and did not participate. The employer participated through Office Manager Mike Riehl. Department Exhibit D-1 was received into evidence.

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 October 6, 2005. 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 October 17, 2005. The employer did not receive the Notice of Claim at its post office box until October 24, 2005. The Notice of Claim had been opened and stapled shut, leading the employer to conclude the document had been misdirected to another post office box and subsequently returned to the post office for re-delivery. The employer filed its protest on October 24, 2005, the same day it received the Notice of Claim.

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 division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service, 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 on the date it is received by the division.

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 division that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service.

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 division 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 division 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 division error or misinformation or delay or other action of the United States postal service or its successor, the division shall issue an appealable decision to the interested party.

The evidence in the record establishes the employer was denied an opportunity to submit its protest in a timely fashion due to delay or other error on the part of the United States Postal Service. The employer immediately submitted its protest upon receipt of the Notice of Claim. Based on the evidence in the record and application of the appropriate law, the administrative law judge concludes that the employer has shown good cause that justifies deeming the protest timely. The matter will be remanded for further proceedings on the timely protest.

DECISION:

The Agency representative's October 25, 2005, reference 03, decision is reversed. The employer's protest was timely. The matter is remanded for further proceedings on the timely protest. The fact finder should proceed accordingly.

jt\pjs