

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JIMMIE D MCALISTER**  
Claimant

**APPEAL NO: 14A-UI-01252-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DONALD WULF**  
Employer

**OC: 12/08/13**  
**Claimant: Respondent (2)**

Section 96.6-2 – Timeliness of Protest  
871 IAC 24.35(2) – Protest Delay

**STATEMENT OF THE CASE:**

The employer appealed a department decision dated January 27, 2014, reference 04, that held it failed to file a timely protest regarding claimant's employment separation on December 5, 2013, and benefits are allowed. A telephone hearing was held on February 25, 2014. The claimant participated. Donald Wulf, Owner, participated for the employer.

**ISSUE:**

Whether the employer filed a timely protest.

**FINDINGS OF FACT:**

The administrative law judge having heard the witness testimony and having considered the evidence in the record finds: The claimant filed an unemployment claim effective December 8, 2013. The department mailed a notice of claim to an old employer's address of record on December 12 with a protest due date of December 22, 2013 (Sunday) that is extended to the next business day December 23. The department tax bureau record shows employer established an account effective December 1, 2013 based on a determination date of December 31. The employer address is listed as Wulf Contracting LLC % Jon Augustus 1110 6th ST Nevada, Iowa.

The postal service forwarded the notice of claim envelope to the current employer's address. It was received on January 8. The employer submitted an in-person protest on January 9, 2014.

**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 administrative law judge concludes employer filed a timely protest as the delay was due to department error. The department knew before the notice of claim was mailed on December 12 the correct employer address. It failed to notify all department work units that caused the claim to be mailed to an old address. When the employer received the claim after the protest period had exhausted, it exercised due diligence in submitting it.

**DECISION:**

The department decision dated January 27, 2014, reference 04, is reversed. The employer filed a timely protest.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/pjs