

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RAMON B BUGARIN BANUELOS**  
Claimant

**APPEAL NO. 10A-UI-16207-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VOLT MANAGEMENT CORP**  
Employer

**OC: 12/20/09**  
**Claimant: Respondent (2-R)**

Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the November 19, 2010, reference 03 decision that allowed benefits and that found the employer's protest untimely. A telephone hearing was set for January 13, 2011 and the parties were properly notified. The only issue set for hearing was timeliness of the employer's protest. Upon review of the administrative file, the administrative law judge concludes that a hearing on the timelines of the protest issue is not necessary. The administrative law judge enters the decision below based on the documents contained in the Agency's administrative file.

**ISSUE:**

Whether the employer's protest of the claim for benefits was timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: On August 19, 2010, Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. 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 August 30, 2010. The notice of claim was received at the employer's address of in a timely manner, prior to the deadline for protest. On August 29, 2010, the employer completed its protest information on the notice of claim form and faxed it to Workforce Development. Workforce Development Unemployment Insurance Service Center documented the protest as being received on August 30, 2010.

**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 employer's protest was timely, as indicated by all of the relevant markings on the notice of claim form the employer faxed to Workforce Development on August 29, 2010. The deadline for the protest was August 30, 2010. Workforce Development date-stamped the protest as being received on August 30, 2010. There was no basis for the Agency to conclude, as it did in the November 19, 2010, reference 03, that the employer's protest was untimely.

This matter will be remanded to the Claims Division for a fact-finding interview concerning the claimant's separation from the employment.

**DECISION:**

The Agency representative's November 19, 2010, reference 03, decision is reversed. The employer's protest was timely. This matter is remanded to the Claims Division for a fact-finding interview concerning the claimant's separation from the employment.

---

James E. Timberland  
Administrative Law Judge

---

Decision Dated and Mailed

jet/kjw