

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ASHLEY R HAIGWOOD
Claimant

APPEAL NO. 07A-UI-01406-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SKYLINE CENTER INC
Employer

**OC: 01/07/07 R: 04
Claimant: Respondent (1)**

Section 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

The employer filed a timely appeal from the representative's decision dated January 29, 2007, reference 01, that allowed benefits. After due notice was issued, a telephone conference hearing was scheduled for and held on February 26, 2007. Although notified, the claimant did not participate. The employer participated through Lisa Hammon.

ISSUE:

The issue in this case is whether the employer's protest regarding the claimant's separation from work on November 6, 2006, was timely.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: The notice of the claimant's claim was mailed to the employer's address of record on January 11, 2007. However, the protest was not completed and returned by the employer within ten days as required by law. The notice of claim contains a warning that the protest must be filed within ten days. Ms. Hammon attempted to facsimile the employer's protest to Iowa Workforce Development on January 16, 2007. However, the transmission did not go through and the protest was not received by the agency. Ms. Hammon did not check at that time for a confirmation that the protest had been received by the agency. Subsequently, after the ten-day appeal period, Ms. Hammon noted that the facsimile had not been transmitted successfully and at that time Ms. Hammon refaxed the protest to the agency on January 24, 2007.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judges concludes the employer's appeal is untimely.

Iowa Code section 96.6-2 provides:

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 representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

In this case, the evidence establishes that the notice of claim had been sent to the employer at its address of record and received by the employer allowing sufficient time for its completion and return by its due date that was printed on the form itself. The delay in the successful transmission of the employer's protest was not due to any act or omission on the part of Iowa Workforce Development. Because the employer had the ability to protest the claim within the ten-day period but did not do so, the administrative must hold that the employer's protest was untimely.

DECISION:

The decision of the representative dated January 29, 2007, reference 01, is hereby affirmed. The decision remains in full force and effect. Benefits are allowed, provided the claimant satisfies all the conditions of eligibility.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

kjw/kjw