

**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 C CARROLL
15372 GREENWOOD ST
HESPERIA CA 92345-4448**

**M & R CONCRETE CONSTRUCTION INC
210 - 5TH ST NE
SIOUX CENTER IA 51250**

**Appeal Number: 06A-UI-07637-SWT
OC: 06/04/06 R: 12
Claimant: Respondent (4)**

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
Section 96.7-2-a(2) – Charges to the Employer's Account

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated July 24, 2006, reference 01, that concluded it had failed to file a timely protest regarding the claimant's separation from employment. A telephone hearing was scheduled for August 15, 2006. Proper notice of the hearing was given to the parties. Neither party participated in the hearing. Based on the administrative file and the law, the following findings of fact, reasoning and conclusions of law and decision are entered.

FINDINGS OF FACT:

The claimant worked for the employer until September 1, 2005, when he left work without notice to the employer regarding his reasons for quitting.

A notice of claim was mailed to the employer's address of record on June 4, 2006, but was not received by the employer until July 20, 2006. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of June 14, 2006. The employer's protest was faxed immediately when it was received on July 20, 2006.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code section 96.6-2. The failure to file a timely protest was due to an Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing the protest. The protest is deemed timely.

Iowa Code section 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the individual is still employed by a base period employer at the time the individual is receiving the benefits and is receiving the same employment from the employer that the individual received during the individual's base period or the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The claimant voluntarily quit employment without good cause attributable to the employer. The employer's account is relieved of charges for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated July 24, 2006, reference 01, is modified in favor of the employer. The employer's protest was timely. The employer's account is relieved of charges for benefits paid to the claimant.

saw/cs