

**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**

**TONY GREENFIELD
20782 PIKE 218
BOWLING GREEN MO 63334**

**ADRIAN TRUCKING INC
705 HWY 78E
RICHLAND IA 52585**

**Appeal Number: 04A-UI-02314-SWT
OC 02/01/04 R 12
Claimant: Respondent (2)**

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:

The employer appealed an unemployment insurance decision dated February 23, 2004, reference 04, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and its account could not be relieved of charges. A telephone hearing was held on March 25, 2003. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Howard Adrian participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked full time for the employer as a truck driver from July 14, 2002 to January 31, 2003. The claimant voluntarily quit employment because his probation officer recommended that he work closer to home.

A notice of claim was mailed to the employer's address of record on February 3, 2004, and was received by the employer on February 16, 2004. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of February 13, 2004. The employer's protest was mailed on February 16, 2004, which was after the time period for protesting had expired.

REASONING AND CONCLUSIONS OF LAW:

The first 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.

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 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 employer's account shall not be charged for benefits paid to the claimant since the claimant voluntarily quit employment without good cause attributable to the employer.

DECISION:

The unemployment insurance decision dated February 23, 2004, reference 04, is reversed. The employer filed a timely protest. The employer's account shall be relieved of benefit charges.

saw/kjf