

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARYL L WESTFALL

Claimant

APPEAL NO. 12A-UI-02948-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LABOR READY MIDWEST INC

Employer

OC: 10/30/11

Claimant: Respondent (2-R)

Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Labor Ready Midwest, Inc. filed an appeal from a representative's decision dated March 14, 2012, reference 03, which held that the protest concerning Daryl Westfall's separation on August 27, 2011 was not timely filed. After due notice was issued, a hearing was held by telephone on April 9, 2012. The employer participated by Amara Meyer, Unemployment Insurance Consultant. Although notified, the claimant did not participate.

ISSUE:

At issue in this matter is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

The administrative law judge, having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on November 8, 2011, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer protested through its tax representative company by facsimile on November 16, 2011 at 1:39 p.m. The tax representative company received a positive fax confirmation that the transmission had been received by Iowa Workforce Development. Later, the employer also sent a subsequent protest by mail.

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(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.

The evidence in the record establishes the employer filed a timely protest via facsimile and receive a positive confirmation that the transmission had been received by Iowa Workforce Development. The administrative law judge thus concludes that the matter should be remanded for further proceedings.

DECISION:

The decision of the representative dated March 14, 2012, reference 03, is reversed. The employer's protest was timely. The matter is remanded for further proceedings by the fact finder.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs