

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SHAWN D STILES

Claimant

APPEAL NO. 07A-UI-01581-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PREMIER PLUMBING NC

Employer

**OC: 10/22/06 R: 12
Claimant: Respondent (2-R)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer, Premier Plumbing, Inc., filed an appeal from a decision dated February 14, 2007, reference 02. The decision found the employer's protest was not timely. After due notice was issued a hearing was held by telephone conference call on February 28, 2007. The claimant provided a telephone number of (515)208-4126. That number was dialed at 10:00 a.m. and the only response was a voice mail which clearly identified it as belonging to "Shawn." A message was left indicating the hearing would proceed without the claimant's participation unless he contacted the Appeals Section at the toll-free number prior to the close of the record. By the time the record was closed at 10:14 a.m. the claimant had not responded to the message and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. The employer participated by Owner Rick Heintz. Exhibit D-1 was admitted into the record.

ISSUE:

The issue is whether the protest is timely.

FINDINGS OF FACT:

Claimant's notice of claim was mailed to employer's address of record on October 24, 2006, and received by employer the next day. He faxed a response on October 25, 2006, to the number provided on the notice of claim. He faxed it twice, once at 12:56 p.m. and once at 1:04 p.m. but it was not received by Iowa Workforce Development.

The fourth quarter statement of charges was mailed to the employer on February 9, 2007, and received on February 12, 2007. Premier Plumbing, Inc., faxed a protest to the statement on the same day it was received.

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.

Iowa Code section 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.
 - a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The employer did submit its protest to Iowa Workforce Development within the ten-day time period required back in October 2006. Through no fault of its own, the department did not receive the protest. It also protested the statement of charges in a timely manner. The protest should therefore be accepted as timely.

DECISION:

The representatives' decision dated February 14, 2007, reference 02, is reversed. The employer's protest was timely.

The issue of the claimant's separation from employment is remanded to the Claims Section for determination.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/pjs