

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANDREW S MARTENS
Claimant

APPEAL 18A-UI-08785-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAXON CONSTRUCTION COMPANY
Employer

**OC: 12/24/17
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Daxon Construction Company, Employer, filed an appeal from the August 16, 2018, (reference 03) unemployment insurance decision that found the protest untimely and determined the claimant, Andrew Martens, was eligible for unemployment insurance benefits. The parties were properly notified of the hearing. A telephone hearing was held on September 7, 2018 at 1:00 p.m. Claimant participated. Employer participated through Steve Daxon, President, and Brian Daxon, Controller. Exhibit D1 was admitted.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The Notice of Claim was mailed to Daxon Construction Company, 19490 258th Avenue, Bettendorf, Iowa on July 31, 2018. (Exhibit D1) This address is the home of Steve Daxon, President of Daxon Construction Company; it was used as the employer's business address when the company was started in 2011. (S. Daxon Testimony)

Steve Daxon was out of the country from July 25, 2018 to August 7, 2018 and returned to work on August 8, 2018. (S. Daxon Testimony) While out of the county, Steve Daxon had his mail held by the post office. (S. Daxon Testimony) Steve Daxon received the notice on August 8, 2018 or August 9, 2018. (S. Daxon Testimony) The protest due date was August 10, 2018. (Exhibit D1) Steve Daxon gave the notice to Brian Daxon, Controller, on August 13, 2018. (B. Daxon Testimony) Brian Daxon completed the protest and submitted it to Iowa Workforce Development via facsimile on August 13, 2018. (B. Daxon Testimony) The protest was received by Iowa Workforce Development on August 13, 2018. (Exhibit D1)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer's protest was 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.

Iowa Admin. Code r. 871-24.35(1) provides:

1. Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

(c) If transmitted by any means other than [United States Postal Service or the State Identification Data Exchange System (SIDES)], on the date it is received by the division.

Iowa Admin. Code r. 871-24-35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

Employer's protest was submitted and received on August 13, 2018 – three days after the due date. Employer's choice to use the president's home address as the company's business address was a business decision; the president's choice to hold mail to his home address while out of the country was a personal decision. Neither of these reasons for delay is attributable to the agency or the United States postal service. The employer received the notice before August 10, 2018, the due date, but did not submit it to Iowa Workforce Development until August 13, 2018, three days after the due date. Therefore, employer's protest is untimely.

DECISION:

The August 16, 2018, (reference 03) unemployment insurance decision is affirmed. The employer filed an untimely protest.

Adrienne C. Williamson
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, IA 50319-0209
Fax: 515-478-3528

Decision Dated and Mailed

acw/ref

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Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v=mpCM8FGQoY>