

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW J GANSEN
Claimant

APPEAL NO. 08A-UI-07584-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PINNACLE FINANCIAL GROUP INC
Employer

**OC: 01/06/08 R: 04
Claimant: Respondent (4)**

Iowa Code section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

Pinnacle Financial Group filed an appeal from the August 22, 2008, reference 01, decision that allowed benefits and that found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on September 4, 2008. The claimant did not respond to the hearing notice instructions to provide a telephone number for the hearing and did not participate. The employer participated through Edie Slifka, Human Resources Manager. Exhibit One and Department Exhibits D-1 were received into evidence. The administrative law judge took official notice of the Agency's record of wages earned by the claimant since he separated from this employer.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On January 9, 2008, Workforce Development mailed a notice of claim to the employer concerning claimant Matthew Gansen. The notice of claim was mailed to the employer's address of record in Decorah. The notice of claim contained a warning that any protest must be postmarked, faxed, or returned by the due date set forth on the notice, which was January 22, 2008. Edie Slifka, Human Resources Manager, received the notice of claim on January 15, 2008. On January 16, Ms. Slifka completed the employer's protest information on the notice of claim form. Ms. Slifka initiated a fax transmission to Workforce Development and used the appropriate fax number: 515-281-6208. Ms. Slifka did not leave the area of the fax machine until she heard an audio signal that the employer's fax machine had made contact with the receiving phone number and was transmitting the fax. The employer's fax machine does not generate a fax confirmation sheet in connection with a successful fax transmission, but does generate a sheet if there is a problem with the fax transmission. The employer's fax machine did not generate a sheet to indicate a problem with the fax to Workforce Development. Workforce Development has no record of receiving the faxed protest.

On August 8, 2008, Workforce Development mailed a quarterly Statement of Charges that included a charge for benefits paid to Mr. Gansen. In response the charge to the employer's account, Ms. Slifka contacted Workforce Development by fax on August 21, 2008 and attached a copy of the notice of claim form she had faxed on January 16, 2008.

Workforce Development records indicate that Mr. Gansen requalified for benefits after separation from this employer and prior to establishing his claim for unemployment insurance benefits, by earning ten times his weekly benefit amount from insured work.

REASONING AND CONCLUSIONS OF LAW:

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.

871 IAC 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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

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 greater weight of the evidence in the record indicates that the employer faxed the protest to Workforce Development on January 16, 2008, that the fax transmission was received by Workforce Development, but that the protest document(s) went missing after being received by Workforce Development. The administrative law judge concludes that the employer submitted a timely protest.

Workforce Development records indicate that the claimant requalified for benefits by earning ten times his weekly benefit amount after separating from the employer and prior to establishing his claim for unemployment insurance benefits. See Iowa Code section 96.5(1)(g).

The employer's account shall not be charged for benefits paid to the claimant. The claimant is eligible for benefits, provided he is otherwise eligible.

DECISION:

The Agency representative's August 22, 2008, reference 01, decision is modified as follows. The employer's protest was timely. The claimant is eligible for benefits, provided he is otherwise eligible for benefits. The employer's account shall be relieved of charges for benefits paid to the claimant.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

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