BEFORE THE EMPLOYMENT APPEAL BOARD Lucas State Office Building Fourth floor Des Moines, Iowa 50319

ANTHONY L CURRY	HEARING NUMBER: 18BUI-07895
Claimant	
and	EMPLOYMENT APPEAL BOARD
BASEMENT SOLUTIONS INC	
Employer	

SECTION: 96.6-2

DECISION

FINDINGS OF FACT:

The administrative law judge issued a decision in this matter August 14, 2018. The decision disposed of a preliminary matter only and remanded the substantive issue of benefits to the claims section. The Claimant appealed the preliminary decision of the administrative law judge to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

Pursuant to 486 IAC 3.1(2), "a party aggrieved by a decision of an administrative law judge may appeal to the employment appeal board..." The Employment Appeal Board interprets an aggrieved party to be one who receives an unfavorable decision from the administrative law judge affecting benefit rights, or overpayment. Here the decision of the administrative law judge only rules on a preliminary matter, that is, whether the protest was timely. The Administrative Law Judge remanded the issue of whether benefits should be allowed.

The question of protest timeliness does not aggrieve the Claimant unless and until there is a ruling denying benefits as a result of the protest. The Administrative Law Judge issued an appealable decision in a case in which *no dispositive decision had been made concerning benefits*. The issue of protest timeliness will not be decided by the Board at this time because we dismiss the current appeal as an appeal of a preliminary matter the disposition of which has not yet aggrieved the Claimant.

If the Claimant loses on the merits either before the Benefits Bureau or before an Administrative Law Judge as a result of the proceedings following the decision finding the protest timely, then the Claimant may appeal the decision on the merits. If such an appeal reaches the Board then the issue of timeliness of protest can be adjudicated by the Board at that time, based on the record in both this case and in that one. In any proceedings before IWD that agency may take the issue of the protest timeliness to have been already adjudicated, but in any subsequent appeal to the Board the issue of timeliness of protest can be taken up along with any appeal on the merits.

In other words, the Claimant has not yet been denied benefits. Until he does there is no reason for him to appeal. *If* the Claimant has benefits denied because of the protest then he can appeal that denial and the issue of timeliness at the same time.

DECISION:

The appeal of the Administrative Law Judge's decision in case August 14, 2018 is **DISMISSED**. The decision of the administrative law judge remains in full force and effect. The Claimant may appeal the issue of timeliness of protest if and when a decision is made adversely affecting the Claimant's ability to collect benefits, and which decision concerns the issue which formed the basis of the protest.

Kim D. Schmett

Ashley R. Koopmans

AMG/fnv

James M. Strohman