

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DAJAUN M RIVERA**  
Claimant

**APPEAL NO. 09A-UI-07707-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TM1 STOP LLC**  
Employer

**Original Claim: 04/19/09  
Claimant: Respondent (4)**

Section 96.6-2 – Timeliness of Protest  
Section 96.5-1 – Voluntary Leaving/Requalification

**STATEMENT OF THE CASE:**

TM1 Stop, L.L.C. (employer) appealed a representative's May 14, 2009 decision (reference 05) that concluded Dajaun M. Rivera (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 12, 2009. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Heather Hoyt appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Should the employer's protest be treated as timely?

Is the employer's account subject to charge? Was the claimant's separation disqualifying?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective April 19, 2009. A notice of claim was mailed to the employer's last known address of record on April 22, 2009. The employer did not receive the notice until May 12, 2009, since the prior business offices of the employer had been flooded, and the employer had been having difficulty in getting its mail properly forwarded by the United States Postal Service. The notice contained a warning that a protest must be postmarked or received by the Agency by May 4, 2009. The protest was not filed until it was signed and faxed on May 12, 2009, which is after the date noticed on the notice of claim.

The claimant's last day of work was June 27, 2008. The employer asserted that he voluntarily quit as of that date. When the claimant established his claim for unemployment insurance benefits, his weekly benefit amount was determined to be \$139.00. Agency records show that after the claimant's separation from this employer, he earned insured wages from another employer exceeding \$1,390.00. Agency records further indicate that the claimant is not currently eligible to receive unemployment insurance benefits due to a more recent separation from employment with another employer that was found to be disqualifying.

## **REASONING AND CONCLUSIONS OF LAW:**

The preliminary issue in this matter is whether the employer filed a timely protest. The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code § 96.6-2 that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes that the employer's representative did not receive the notice of claim until May 12, 2009. The employer was not responsible for the delay in receiving the notice of claim, but the delay was due to department error or misinformation or delay or other action of the United States Postal Service. The employer did file its protest within ten days of actually receiving the notice. The administrative law judge, therefore, concludes that the protest should be treated as timely filed pursuant to Iowa Code § 96.6-2.

The wages the claimant earned from the employer are in his base period. The employer asserted the claimant voluntarily quit as of June 27, 2008. However, this issue does not need to be resolved; because after the claimant worked for the employer but before he filed her claim for benefits effective April 19, 2009, he earned more than \$1,390.00 in wages from another employer. As a result, the reasons for his separation from the employer in June 2008 do not affect the claimant's eligibility to receive unemployment insurance benefits. 871 IAC 24.28(1). This also means the employer's account will not be charged for any benefits the claimant receives. Accordingly, benefits would be allowed if the claimant were otherwise eligible, and the account of the employer shall not be charged.

**DECISION:**

The representative's May 14, 2009 decision (reference 05) is modified in favor of the appellant. The employer's protest is treated as timely. The claimant has requalified for benefits since the June 2008 separation. Benefits would be allowed, provided the claimant were otherwise eligible. The account of the employer shall not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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