

**IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**KEVIN LARSEN  
771 N 2<sup>ND</sup> #16  
CHEROKEE IA 51012**

**SPECTRA HEALTH CARE INC  
202 W 7<sup>TH</sup> ST  
PO BOX 35  
ALTA IA 51002-1540**

**Appeal Number: 04A-UI-12794-ET  
OC: 10-17-04 R: 01  
Claimant: Respondent (4)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 2<sup>nd</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Protest  
Iowa Code Chapter 95 - Requalification

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated November 23, 2004, reference 02, that concluded it failed to file a timely protest regarding the claimant's separation from employment on April 8, 2004, and no disqualification of unemployment insurance benefits was imposed. After due notice was issued, a hearing was held on December 14, 2004, before Administrative Law Judge Julie Elder. Sue Morrow, Administrator, participated in the hearing on behalf of the employer. The claimant did not respond to the hearing notice and did not participate in the hearing.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and having considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on October 25, 2004. The employer filed a protest on November 19, 2004. The claimant has requalified for benefits since the separation from the employer.

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.

The employer credibly testified that it received the Notice of Claim November 18, 2004, and faxed its protest November 19, 2004, after calling the Department. The envelope was distressed and looked as if it might have caught on a piece of machinery or something of that nature. The administrative law judge concludes the employer filed its protest in a timely manner because it did not receive the Notice of Claim until after the due date and it faxed the document the day after it received it. This is sufficient evidence of intent to protest any potential charges to their account. The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The November 23, 2004, reference 02, decision is modified in favor of the appellant. The employer has filed a timely protest, and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

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