

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KENNY L MCCRACKEN
Claimant

APPEAL NO. 09A-UI-02505-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

"L A LEASING INC
"SEDONA STAFFING
Employer

OC: 12/07/08
Claimant: Respondent (2-R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Sedona Staffing filed a timely appeal from the February 10, 2009, reference 03, decision that allowed benefits and found the employer's protest untimely. After due notice was issued a hearing was held on March 11, 2009. The claimant did not participate. The employer participated through Colleen McGuinty. Exhibit D-1 and Exhibit A were received into evidence.

ISSUE:

The issue in this matter is whether the employer filed a timely protest as required by law.

FINDINGS OF FACT:

The administrative law judge, 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 December 15, 2008 and received by the employer on approximately December 17, 2008. The Notice of Claim contains a warning that the protest must be postmarked or returned not later than ten days from the initial mailing date. The employer affected a protest by a facsimile on December 19, 2008 and received a positive facsimile report for the transaction. (See Exhibit A). The issue of Kenny McCracken's separation from employment has not been investigated or adjudicated at the claims level.

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 administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law as the employer faxed its protest within the

ten-day time limit and the employer has met its burden of proof in establishing that a positive facsimile report showed that the protest had been successfully sent and received by Iowa Workforce Development. The administrative law judge finds the sworn testimony of Ms. McGuinty and Employer's Exhibit A sufficient evidence that the employer was reasonable in its belief that it had filed the initial protest timely. The issue of Kenny McCracken's separation from employment is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The February 10, 2009, reference 03, decision is reversed. The employer has filed a timely protest. The issue of Kenny McCracken's separation from employment is remanded to the Claims Section of Iowa Workforce Development for an initial investigation and determination.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

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