

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL L MYERS**  
Claimant

**APPEAL NO: 07A-UI-02101-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**L A LEASING INC**  
**SEDONA STAFFING**  
Employer

**OC: 11/12/06 R: 04**  
**Claimant: Respondent (4)**

Section 96.6-2 – Timeliness of Protest  
871 IAC 24.28(1) – Requalification

**STATEMENT OF THE CASE:**

L A Leasing, Inc. / Sedona Staffing (employer) appealed a representative's February 19, 2007 decision (reference 02) that concluded Michael L. Myers (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. Hearing notices were mailed to the parties' last-known addresses of record for a telephone hearing to be held on March 15, 2007. At the time for the hearing but in lieu of the hearing being held, the administrative law judge determined that no hearing was necessary and a decision was made on the record. Based on a review of the information in the administrative file 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?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective November 12, 2006. A notice of claim was mailed to the employer's last-known address of record on November 21, 2006. The employer received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by December 1, 2006. The employer provided evidence that it had in fact successfully faxed the protest to the Agency on December 1, 2006; however, the Agency did not receive a copy of the protest until the employer resent the protest on February 6, 2007, which is after the date noticed on the notice of claim.

The claimant's last day of work with the employer was on or about June 9, 2006. When he established his claim for unemployment insurance benefits, his weekly benefit amount was determined to be \$256.00. Agency records show that after the claimant's separation from this employer, he earned insured wages from another employer exceeding \$2,560.00.

## **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 which 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 file a timely protest but was deprived of the opportunity to have it recognized as timely.

The record establishes the employer's representative faxed a completed protest to the Agency on December 1, 2006, within the time for filing a timely protest. The administrative law judge concludes that failure to acknowledge the protest as having been received on or by that date was due to error, delay or other action of the Agency pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2.

The substantive issue in this case is whether the claimant's June 9, 2006 separation disqualifies him from benefits and whether the employer's account is subject to charge. The employer asserted the claimant voluntarily quit as of June 9, 2006. However, this issue does not need to be resolved because after the claimant worked for the employer but before he filed his claim for benefits November 12, 2006, he earned more than \$2,560.00 in wages from another employer. As a result, the reasons for his separation in June 2006 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.

## **DECISION:**

The representative's February 19, 2007 decision (reference 02) is modified in favor of the appellant. The employer's protest was timely. The claimant requalified to receive

unemployment insurance benefits after the June 9, 2006 separation; therefore, benefits are allowed as of November 12, 2006 if the claimant was otherwise eligible. The employer's 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

ld/pjs