

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**MICHELLE R GRAVITT**  
Claimant

**MATLICK INC**  
**HAWKEYE RESTAURANT**  
Employer

**APPEAL 14A-UI-13174-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/18/14**  
**Claimant: Respondent (4)**

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Iowa Code § 96.6-2 – Timeliness of Protest  
Iowa Code § 96.6-2 – Timeliness of Appeal

**STATEMENT OF THE CASE:**

The employer filed an appeal from the July 9, 2014, (reference 03) unemployment insurance decision that allowed benefits finding the employer's notice of protest untimely. The parties were properly notified about the hearing. A telephone hearing was held on February 13, 2015. Claimant did not participate. Employer participated through Chelsea Shipley, Manager. Department's Exhibit D-1 was entered and received into the record. Employer's Exhibit One was entered and received into the record.

**ISSUES:**

Did the employer file a timely notice of protest?

Did the employer file a timely notice of appeal?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on June 13, 2014 and received by the employer on June 24, 2014 after the due date of June 23, 2014. The employer filed its protest on June 26, 2014. The claimant has requalified for benefits since the separation from the employer.

The employer was then sent a decision indicating that their protest was untimely and that claimant would be awarded benefits and their account was subject to charge. The employer did not ever receive that fact-finding decision. The employer found out that charges were being made to their account when they received the statement of charges. The employer filed a timely appeal to the statement of charges.

**REASONING AND CONCLUSIONS OF LAW:**

Iowa Code § 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 did not have an opportunity to protest the notice of claim by the due date because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within one day of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

Additionally, the employer never received the fact-finding decision but only learned of the decision when their statement of charges arrived in the fall of 2014. The employer did file a timely appeal to the statement of charges.

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 July 9, 2014 (reference 03) 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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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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