

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

KELLY MERIDETH

Claimant

APPEAL NO. 06A-UI-09880-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BIG SHOTS GRILL INC

Employer

**OC: 07/30/06 R: 04
Claimant: Respondent (4)**

Section 871 IAC 24.1(113)a - Layoffs
Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Big Shots Grill, Inc. filed an appeal from a representative's decision dated October 2, 2006, reference 02, which held that the protest to Kelly Merideth's claim had not been timely filed. After due notice was issued, a hearing was held by telephone on October 23, 2006. Ms. Merideth participated personally. The employer participated by Geno Del Preore and Anna Del Preore, Owners, and Mary Jo Sherman, Manager.

ISSUE:

The threshold issue is whether the employer filed a timely protest to Ms. Merideth's claim. The second issue in this matter is whether Ms. Merideth was separated from employment for any disqualifying reason.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Ms. Merideth filed a claim for job insurance benefits effective July 30, 2006. Notice of the claim was mailed to the employer on August 21, 2006. The notice was mailed to the employer at 322 North 4th Street in Burlington, Iowa. The employer does not operate at that location and has not for at least two years. The tattoo parlor located at that address gave the notice of claim to the employer on September 27 and a protest was filed by fax the same day.

Ms. Merideth began working for Big Shots Grill, Inc. on April 29, 2006 as a cook. She worked approximately 20 hours each week. She was off work between June 16 and July 25 because of problems with her hand. A doctor's statement was presented to verify the need to be absent.

During the week of August 6, Ms. Merideth was advised by her manager that the employer was going to discontinue serving lunch. The manager did not specify how long it would be before the employer resumed serving lunch. The manager advised Ms. Merideth that she had two nights of work available, for a total of ten hours, during the week ending August 12. She further indicated that there would be no guarantee of hours for the following weeks. Ms. Merideth

indicated she would have difficulty working nights because of childcare issues. The manager advised Ms. Merideth that she would be called when lunch service resumed.

REASONING AND CONCLUSIONS OF LAW:

The employer was mailed a notice on August 21, 2006 that Ms. Merideth had filed a claim for job insurance benefits. The notice advised the employer that a protest to the claim was due by August 31, 2006. Because the notice was mailed to an address no longer used by the employer, the notice was not received in time to complete a protest by the designated due date. The employer acted with due diligence in filing its protest on September 27, 2006, the same day it received actual notice of the claim. For the above reasons, the administrative law judge concludes that the protest should be deemed timely filed as required by Iowa Code section 96.6(2). Therefore, the administrative law judge has jurisdiction over the separation issue.

The administrative law judge concludes from all of the evidence that Ms. Merideth became separated from employment on or about August 13, 2006 due to a lack of work when the employer discontinued serving lunch. She was told she could have ten hours one week but no guarantee of hours for the weeks thereafter. Because the employer indicated she would be recalled when lunch service resumed, the administrative law judge concludes that Ms. Merideth was laid off from work within the meaning of 871 IAC 24.1(113)a. Therefore, no disqualification is imposed.

DECISION:

The representative's decision dated October 2, 2006, reference 02, is hereby modified. The employer filed a timely protest to Ms. Merideth's claim. She was separated from employment for no disqualifying reason. Benefits are allowed, provided she satisfies all other conditions of eligibility.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/kjw