

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**BREE A NIXON**  
Claimant

**APPEAL NO. 12A-UI-12885-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**LUCKY FROG BAR AND GRILL**  
Employer

**OC: 09/16/12**  
**Claimant: Respondent (4)**

Section 96.5-1-a – Quit for Other Employment  
Section 96.6-2 – Timely Protest

**STATEMENT OF THE CASE:**

Lucky Frog Bar and Grill filed a timely appeal from an unemployment insurance decision dated October 18, 2012, reference 03, that allowed benefits to Bree A. Nixon upon a finding that the employer's protest was untimely. After due notice was issued, a telephone hearing was held November 15, 2012 with Owner, Jason Waldorf, participating for the employer. Ms. Nixon did not provide a telephone number at which she could be contacted. Exhibit D-1 was admitted into evidence.

**ISSUES:**

Can the protest be accepted as timely?  
Was the separation from employment a disqualifying event?

**FINDINGS OF FACT:**

Bree A. Nixon was employed as a part-time bartender and waitress by Lucky Frog Bar and Grill for approximately three years prior to her resignation effective August 29, 2012. Ms. Nixon resigned to accept other employment with Hides Inn, L.L.C. Further work was available for her had she not resigned.

Lucky Frog Bar and Grill received some correspondence from the agency at an address in McCausland, Iowa. Most correspondence from the agency, however, is sent to an address in Camanche. The notice of claim was sent to the McCausland address. Mr. Waldorf did not become aware of the notice of claim until approximately October 10, 2012. He filed his response on October 16, 2012.

**REASONING AND CONCLUSIONS OF LAW:**

The first question is whether the protest can be accepted as timely. The evidence establishes that it was filed more than ten days after the notice of claim had been mailed to the employer. However, it appears from the evidence that the agency bears at least some responsibility for the

delay because it sent the notice to McCausland instead of to Camanche. Additional time may be granted for filing documents if the delay is the fault of the U.S. Postal Service or the agency. See 871 IAC 24.35. The administrative law judge concludes for the present case that the protest can be accepted as timely.

The remaining question concerns the unemployment insurance consequences for the parties of the separation.

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

An individual who resigns from employment for the sole purpose of accepting other employment is not disqualified for benefits as a result of the first separation. On the other hand, the first employer is relieved of charges. This is fair because the first employer was willing to provide further employment for the claimant. The evidence here persuades the administrative law judge that Ms. Nixon resigned for the sole purpose of accepting other employment but that Lucky Frog Bar and Grill is not responsible for her subsequent unemployment.

**DECISION:**

The unemployment insurance decision dated October 18, 2012, reference 03, is modified. The protest can be accepted as timely. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. No benefits shall be charged to the account of Lucky Frog Bar and Grill.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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