

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NICOLE A CARPENTER
Claimant

TIMOTHY G SMITH
Employer

APPEAL 18A-UI-00162-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 10/22/17
Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from the December 26, 2017, (reference 05) unemployment insurance decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on January 30, 2018. The claimant, Nicole A. Carpenter, did not register a telephone number at which to be reached and did not participate in the hearing. The employer participated by Timothy Smith, Owner; and Sarah Nicen, Manager. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest.

ISSUE:

Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Claimant's notice of claim was mailed to employer's address of record on October 25, 2017. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of November 6, 2017. The employer did not file a protest response until December 13, 2017, which is after the ten-day period had expired because he had not received the Notice of Claim. The employer received the Notice of Claim during the weekend of December 9 and 10, and it filed the statement of protest the following week.

REASONING AND CONCLUSIONS OF LAW:

The sole issue is whether employer's protest is timely. The administrative law judge concludes it is.

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 employer did not have an opportunity to protest the notice of claim 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 Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within three days of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

DECISION:

The December 26, 2017, (reference 05) unemployment insurance decision is reversed. The employer filed a timely protest.

REMAND:

The separation issue is remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision.

Elizabeth A. Johnson
Administrative Law Judge

Decision Dated and Mailed

lj/scn