

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**TABBETHA J JURGENSEN**  
Claimant

**APPEAL 19A-UI-00551-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PACKERS SANITATION SERVICES INC**  
Employer

**OC: 12/16/18  
Claimant: Respondent (4)**

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Iowa Code Chapter 95 – Requalification  
Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 10, 2019, (reference 07) decision that allowed benefits and found the protest untimely. No hearing was held as there was sufficient evidence in the appeal letter and accompanying documents to resolve the matter without testimony.

**ISSUE:**

Did the employer file a timely notice of protest, and if so has the claimant requalified for benefits since the separation?

**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 December 19, 2018 and received by the employer on December 24, 2018. Documents submitted by the employer show the employer attempted to fax the notice of protest to the correct fax number on December 28, 2018 at 2:35 p.m. but the agency fax machine would not accept the fax or the fax machine rang constantly busy. The only reason the employer's notice of protest was not received was due to the agency fax machine not accepting it. The employer filed its protest on January 4, 2019. The claimant has requalified for benefits since the separation from the employer.

**REASONING AND CONCLUSIONS OF LAW:**

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 by the due date because the agency fax machine would not accept their timely filed notice of protest. The malfunction of the agency fax machine is good cause for a late filed notice of protest. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest by U.S. Mail when the agency fax machine would not accept their timely filed fax. Therefore, the protest shall be accepted as timely.

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 January 10, 2019, (reference 07) 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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