

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MARK A MORGAN**  
Claimant

**APPEAL NO. 08A-UI-05653-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**WAL-MART STORES INC**  
Employer

**OC: 12/30/07 R: 04  
Claimant: Respondent (4)**

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 June 16, 2008, reference 02, decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. After due notice was issued, a hearing was held by telephone conference call on July 2, 2008. The claimant participated. The employer participated through Talx representative Brad Kerr about the issue of the timeliness only and Chuck Shellmyer from Wal-Mart about the separation. Department's Exhibit D-1 was received.

**ISSUE:**

The issue is whether employer's protest is timely and if claimant has requalified since the separation and before receiving benefits.

**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 January 3, 2008 and received on January 5, 2008. The employer filed its protest on January 7, 2008. (Department's Exhibit D-1) The claimant has requalified for benefits since the separation from the employer by working for Larry Smith Construction Unlimited of Plymouth, Illinois and earning \$2,564.88 in insured wages after the separation from Wal-Mart and before filing his claim for benefits with an effective date of December 30, 2007.

**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 filed a protest in a timely manner on January 7, 2008 but the agency did not receive the document in the mail. Immediately upon receipt of information to that effect, the protest was re-filed on June 6, 2008. Therefore, the protest shall be accepted as timely.

The administrative law judge further concludes that the claimant has requalified for benefits from an Illinois employer since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

**DECISION:**

The June 16, 2008, reference 02, 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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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs