

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JUSTIN L STEVENSON**  
Claimant

**HENKEL CONSTRUCTION CO**  
Employer

**APPEAL 19A-UI-00827-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/06/19**  
**Claimant: Respondent (4)**

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Iowa Code § 96.6(2) – Timeliness of Protest  
Iowa Code Chapter 96 – Requalification

**STATEMENT OF THE CASE:**

Henkel Construction Co. (employer) filed an appeal from the January 25, 2019, reference 02, 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 February 13, 2019. Justin L. Stevenson (claimant) and the employer responded to the hearing notice but no hearing was held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

**ISSUES:**

Is the employer's protest timely?  
Has the claimant requalified for benefits since the separation from this employer?

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant separated from employment on April 27, 2018 when he voluntarily quit to accept other employment. He filed a claim for benefits effective January 6, 2019. The claimant's weekly benefit amount is \$352.00. The administrative record shows the claimant has earned more than \$3,520.00 in insured wages since the separation and prior to filing the claim for benefits.

The notice of claim was mailed to employer's address of record on January 14, 2019, and was received by employer within ten days. 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 January 24, 2019. Iowa Workforce Development (IWD) records show the employer's protest was received on January 22, 2019 which was before the deadline response.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes that the employer filed a timely protest and the claimant has requalified for benefits since the separation. Therefore,

benefits are allowed, provided the claimant is otherwise eligible, and the employer's account shall not be charged.

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.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

Iowa Code section 96.5(1)g provides:

An individual shall be disqualified for benefits, regardless of the source of the individual's wage credits:

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:

...

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work

equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). Another portion of section 96.6(2) dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The reasoning and holding of the *Beardslee* court is considered controlling on the portion of Iowa Code § 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

The protest was received by IWD on January 22, 2019 before the ten-day deadline of January 24, 2019. The employer filed a timely protest. The claimant separated from the employer on April 27, 2018. The administrative record shows he has requalified for benefits by earning ten times his weekly benefit amount in insured wages between separating from the employer and filing his claim for unemployment insurance benefits. Accordingly, benefits are allowed, provided the claimant is otherwise eligible, and the employer's account shall not be charged.

**DECISION:**

The January 25, 2019, reference 02, unemployment insurance 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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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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