

**IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**ASHLEY M KING
2560 – 290TH ST
ROWLEY IA 52329**

**JL SUBS INC
SUBWAY
60003 DUCHARME RIDGE
EASTMAN WI 54626**

**Appeal Number: 06A-UI-00476-JTT
OC: 11/27/05 R: 03
Claimant: Respondent (4)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

JL Subs "Subway" filed a timely appeal from the January 5, 2006, reference 04, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held on January 31, 2006. Claimant Ashley King participated. The employer participated through Owner Lonnie Achenbach. Department's Exhibit D-1 and D-2 and Employer Exhibit One were received into evidence.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The notice of claim was mailed to employer's address of record on November 30, 2005, and received by employer within ten days. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by December 12, 2005. On December 2, the employer faxed its

protest to the Unemployment Insurance Service Center in Des Moines. The employer received a fax confirmation report from its fax machine which indicated the fax successfully transmitted.

Since separating from the employment, claimant Ashley King has requalified for benefits by earning ten times her weekly benefit amount from insured employment.

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.

871 IAC 24.35(1) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department.

871 IAC 24.35(2) provides:

(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 department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

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 department 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 department error or misinformation or delay or other action of the

United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The weight of the evidence in the record establishes that the employer submitted a timely protest. Further proceedings on the claimant's eligibility are not necessary because the claimant has requalified for benefits. See Iowa Code section 96.5(2)(a).

DECISION:

The Agency representative's January 5, 2006, reference 04, decision is affirmed, but modified. The claimant has requalified for benefits and is eligible for benefits, provided she is otherwise eligible. The employer filed a timely protest. The employer's account shall not be charged.

jt/kjw