

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CYNTHIA A GIPE
Claimant

APPEAL NO. 08A-UI-11371-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AMERICAN TV & APPLIANCE INC
Employer

**OC: 11-09-08 R: 02
Claimant: Respondent (4)**

Section 96.6-2 – Timeliness of Protest
Iowa Code Chapter 95 – Requalification

STATEMENT OF THE CASE:

The employer filed a timely appeal from the November 26, 2008, reference 02, decision that found the employer's notice of protest untimely and allowed benefits. After due notice was issued, a hearing was held on December 17, 2008. The claimant did participate. The employer did participate through Brooke Moore, Human Resources Manager. Department's Exhibit D-1 was received. Employer's Exhibit One was received.

ISSUE:

Did the employer file a timely notice of protest?

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 November 14, 2008. The employer did protest on November 25, 2008. The employer attempted to fax in the notice of protest on November 19 and again three times on November 24, but the agency fax machine line was busy each time and the fax would not go through. 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 administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law because they did attempt to fax the notice of protest in on four separate occasions, but due to a busy fax line were unable to complete the

transaction. This is sufficient evidence of intent to protest any potential charges to their account. 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 November 26, 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.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/kjw