

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**GERRIT R WYNKOOP**  
Claimant

**KIRKWOOD COMMUNITY COLLEGE**  
**AREA 1**  
Employer

**APPEAL 16A-UI-03630-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/06/16**  
**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 March 23, 2016, (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. No hearing was held as there was sufficient evidence in the appeal letter and accompanying documents to resolve the matter without testimony.

**ISSUE:**

The issue is whether employer's protest is timely.

**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 March 9, 2016. The employer filed their notice of protest via fax on March 19, but it was not received due to a faulty fax machine at IWD. The claimant has requalified for benefits since the separation from the employer.

**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 did not have an opportunity to protest the notice of claim by the due date because the agency fax machine malfunctioned. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within days of learning of the failure of the agency fax machine. 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 March 23, 2016, (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/css