

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS A DEPAEPE
Claimant

APPEAL 17A-UI-00192-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PROFESSIONAL BUILDING SERVICES OF
Employer

OC: 12/11/16
Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 3, 2017, (reference 01) unemployment insurance decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to Iowa Admin. Code r. 871-24.9(2)b. After due notice was issued, a hearing was scheduled to be held by telephone conference call on January 27, 2017. Claimant Thomas Depaepe participated. Employer Professional Building Services participated through Meredith Schiske. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest. No hearing was held as there was sufficient evidence in the administrative record, appeal letter and accompanying documents 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 fact-finding decision indicates a Notice of Claim for this claimant was mailed or electronically submitted to the employer's address of record on December 28, 2015, and the protest was due within ten days of that date. The administrative law judge could not find any record of this employer being sent a Notice of Claim in 2015. The employer filed a protest on December 28, 2016 after receiving a Notice of Claim earlier that same day. Claimant separated from employment with this employer on October 16, 2015. The claimant has requalified for benefits since the separation from the employer.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

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.

There is no record of a Notice of Claim being sent to this employer in 2015 and the most recent Notice of Claim sent to the employer was sent on December 28, 2016. The employer filed its protest to that notice later the same day. The employer did not have an opportunity to protest the December 2015 Notice of Claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest the same day of receipt of the notice of claim. 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 January 3, 2017, (reference 01) 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 (account number 218725-000) shall not be charged.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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