

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TIMOTHY R BARKER
Claimant

APPEAL NO. 09A-UI-00540-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PIZZA NOOK LLC
BOB O LINKS PIZZA NOOK
Employer

OC: 12/21/08 R: 04
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 January 8, 2009, reference 01, decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. After due notice was issued, a hearing was scheduled to be held by telephone conference call on January 29, 2009. Both parties responded to the hearing notice instructions but 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 December 24, 2008 and received before January 5, 2009. Employer attempted to fax the protest on three different days but the line was consistently busy. He was finally able to connect with the fax line on January 6, 2009 and also mailed the protest the same day. 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 fax response line was consistently unavailable. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within three or four days of receipt of the notice of claim and made several good-faith efforts to fax the protest within the allotted time period. 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 8, 2009, reference 01, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/kjw