

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEIGHANN BIELER**  
Claimant

**APPEAL NO. 10A-UI-11473-BT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MCDONALD'S RESTAURANT**  
Employer

**OC: 07/18/10  
Claimant: Respondent (4)**

Iowa Code § 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

McDonald's Restaurant (employer) appealed an unemployment insurance decision dated August 5, 2010, reference 02, which held it failed to file a timely protest regarding the claimant's separation of employment on February 9, 2010 and no disqualification of unemployment insurance benefits was imposed. Due notice was issued scheduling the matter for a telephone hearing to be held on October 1, 2010. Because a decision fully favorable to the parties could be made based on the record as it stood, a hearing was deemed unnecessary. Based on the evidence and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUE:**

The issue is whether the employer's protest in this matter was timely.

**FINDINGS OF FACT:**

The administrative law judge, having reviewed and considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on July 22, 2010. The protest was due on August 2, 2010. The employer did not receive the notice of claim until August 2, 2010 and filed its protest on August 3, 2010.

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, 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 Employment Security Commission, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest immediately upon 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 employer's protest is timely. The unemployment insurance decision dated August 5, 2010, reference 02, is modified in favor of the appellant. The claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account shall not be charged.

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Susan D. Ackerman  
Administrative Law Judge

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Decision Dated and Mailed

sda/kjw