

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA D POHL**  
Claimant

**APPEAL NO. 08A-UI-00197-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MENARD INC**  
Employer

**OC: 12-09-07 R: 03  
Claimant: Respondent (4)**

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

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the January 3, 2008, reference 04, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on January 23, 2008. The claimant did not participate. The employer did participate through Tim Bormann, General Manager. Department's Exhibit D-1 was received.

**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 17, 2007. The employer alleges that one of his employees, Christi Blum, faxed in the notice of claim form on December 19, 2007, but it was not received by Iowa Workforce Development. For some unknown reason, Mr. Bormann re-faxed in the notice of protest form again on January 2, 2008. 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 of the uncontroverted testimony from Mr. Bormann that the notice of protest form was faxed to Iowa Workforce Development on

December 19. While it is curious that Mr. Bormann would re-fax a document he believed already sent, the employer has met their burden of proving that they filed a timely notice of protest. 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 January 3, 2008, reference 04, 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.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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