BEFORE THE EMPLOYMENT APPEAL BOARD Lucas State Office Building Fourth floor Des Moines, Iowa 50319

SCHUYLER D KIESEL	:	
	:	HEARING NUMBER: 14B-UI-05808
Claimant,	:	
and		EMPLOYMENT APPEAL BOARD
WINNEBAGO INDUSTRIES	:	DECISION

Employer.

ΝΟΤΙΟΕ

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.6-2

DECISION

UNEMPLOYMENT BENEFITS ARE ALLOWED IF OTHERWISE ELIGIBLE

The Employer appealed this case to the Employment Appeal Board. The members of the Employment Appeal Board reviewed the entire record. The Appeal Board, one member dissenting, finds it cannot affirm the administrative law judge's decision. The Employment Appeal Board **REVERSES** as set forth below.

FINDINGS OF FACT:

A hearing in the above matter was scheduled for June 27, 2014 in which the issue to be determined was whether the Employer (Winnebago Industries) filed a timely protest. During the hearing, the Employer acknowledged that he received a Notice of Claim on July 9, 2014 and that he chose not to protest at that time because Mr. Kiesel had only been laid off for a week and sought unemployment benefits effective July 7, 2013. The Claimant returned to work on July 8th and worked until July 16th, 2013, then quit.

On July 24, 2013, the Employer filed a Notice of Separation online. The Employer received no further correspondence from the agency until he received the Notice of Charges on March 31, 2014, which he appealed to the administrative law judge. The administrative law judge determined that the Employer failed to file a timely protest and allowed benefits to the Claimant. The administrative law judge's decision has been appealed to the Employment Appeal Board.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.8(2)"d" provides:

The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be made by mail using Form 60-0154, Notice of Separation, or by telephone using a telephone number designated by the department.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. *If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.* (Emphasis added.)

In the instant case, the Claimant was eligible to receive benefits for the week he was laid off. His benefits presumably ended once he returned to work. Once the Claimant quit, the Employer appropriately filed a Notice of Separation, albeit after the 10 days allotted to file a protest of the Notice of Claim. There is nothing in the record to establish that Claimant filed an additional claim, which would have triggered action on Workforce's end. Since that appears not to have occurred (additional claim), then the Employer's Notice of Separation is deemed timely. And even if the additional claim was filed, and Workforce did not issue another Notice of Claim, then the Employer's protest would be also be deemed timely based on what we consider to be agency error. For this reason, this matter will be remanded to the Iowa Workforce Development Center, Claims Section, for a determination of the separation issue.

DECISION:

The administrative law judge's decision dated June 27, 2014 REVERSED AND REMANDED. The decision of the administrative law judge is not vacated at this time, and remains in force unless and until the Department makes a differing determination pursuant to this remand. This matter is remanded to the Workforce Development Center, Claims Section, for a determination of the separation issue.

Kim D. Schmett

Cloyd (Robby) Robinson