

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOSUE F DE LEON
Claimant

**OTTUMWA COMMUNITY SCHOOL
DISTRICT**
Employer

APPEAL 15A-UI-00166-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/30/14
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 December 23, 2014 (reference 05) decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. There was sufficient evidence in the appeal letter and accompanying documents to resolve the matter without testimony and no hearing was held.

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 incorrect address for the employer by the Agency. The employer did not receive mail during the period December 24, 2014 through January 5, 2015 as the school was shut down. The claimant has re-qualified 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 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 within one 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 re-qualified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The December 23, 2014 (reference 05) decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has re-qualified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

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