

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRITTANY A BARBER**  
Claimant

**MENARD INC**  
Employer

**APPEAL 18A-UI-12188-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/25/18**  
**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 13, 2018, (reference 03) decision that allowed benefits and found the protest untimely. No hearing was held as there was sufficient evidence in the appeal letter and accompanying documents to resolve the matter without testimony.

**ISSUE:**

Did the employer file a timely notice of protest?

**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 November 30, 2018 and received by the employer on December 10, 2018, the date a notice of protest was due. The employer filed their protest on December 11, 2019, one day after actual receipt of the notice of claim. 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 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 delay was due to a delay by the United States Postal Service in delivering the notice of claim to the employer. An employer must be given a

reasonable time to file a notice of protest. Requiring filing of the notice of protest on the same day it was received by the employer is unreasonable. 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 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 December 13, 2018, (reference 03) 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

tkh/rvs