

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MATTHEW C FOSSELMAN
Claimant

APPEAL NO: 07A-UI-01239-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LUBRICATIONS OF DES MOINES #3 LTD
JIFFY LUBE**
Employer

**OC: 12-31-06 R: 02
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the January 24, 2007, reference 03, decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was scheduled to be held by telephone conference call on February 20, 2007. No hearing was held as the information in the appeal letter was sufficient to render a decision.

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 January 8, 2007. The employer did protest on January 19, 2007, the same day it was received. 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 within the 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 January 24, 2007, 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css