

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**LEANNA L TOBEN**  
Claimant

**APPEAL NO. 08A-UI-11529-AT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE LODGE OF ASHWORTH INC**  
Employer

**OC: 11/16/08 R: 01  
Claimant: Respondent (4/R)**

Section 96.6-2 – Timely Protest

**STATEMENT OF THE CASE:**

The Lodge of Ashworth filed a timely appeal from an unemployment insurance decision dated December 5, 2008, reference 03, that allowed benefits to Leanna L. Toben while not relieving the employer of charges for benefits upon a finding that the employer's protest was not timely. After due notice was issued, a telephone hearing was held December 22, 2008 with Ms. Toben participating. Assistant Manager Pamela Young participated for The Lodge of Ashworth.

**ISSUE:**

Can the employer's protest be accepted as timely?

**FINDINGS OF FACT:**

Having heard the testimony of the witnesses and having examined all matters of record, the administrative law judge finds: Leanna L. Toben filed a claim for unemployment insurance benefits during the week that began November 16, 2008. On November 20, 2008 the Agency mailed a notice of claim to The Lodge of Ashworth. The employer received the notice of claim on December 3, 2008 and filed a protest on the same day.

After leaving employment at The Lodge of Ashworth but before filing her present claim for unemployment insurance benefits, Ms. Toben earned more than ten times her weekly benefit amount in wages for insured work with another employer.

**REASONING AND CONCLUSIONS OF LAW:**

The question before the administrative law judge is whether the employer's protest can be accepted as timely. The administrative law judge concludes that it can. Additional time for filing documents with the Agency may be granted if the delay is the fault of the postal service or of the Agency. See 871 IAC 24.35. The evidence in this record persuades the administrative law judge that the notice of claim was not delivered to the employer until December 3, 2008 and that the employer filed its response on the same day. Under these circumstances, the protest may

be accepted as timely. This matter should be remanded to the Unemployment Insurance Services Division to determine if the employer can be relieved of charges.

**DECISION:**

The unemployment insurance decision dated December 5, 2008, reference 03, is affirmed. The claimant is entitled to receive unemployment insurance benefits, provided she is otherwise eligible. The question of whether the employer may be relieved of charges is remanded to the Unemployment Services Divisions.

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Dan Anderson  
Administrative Law Judge

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Decision Dated and Mailed

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