

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LILLIAN I MEISENBURG
Claimant

APPEAL NO. 09A-UI-00555-S2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RLMV INC
SUBWAY RESTAURANT
Employer

OC: 12/07/08 R: 04
Claimant: Respondent (2)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Subway Restaurant (employer) appealed a representative's January 7, 2009 decision (reference 03) that allowed unemployment insurance benefits to Lillian Meisenburg (claimant) because it found the protest untimely. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was scheduled for January 29, 2009. The claimant did not provide a telephone number for the hearing and, therefore, did not participate. The employer participated by Diana Dunlap, Manager.

ISSUE:

The issue is whether the protest was filed in a timely manner.

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 December 18, 2008, but not received by the employer until December 31, 2008. The notice of claim contains a warning that any protest must be postmarked, faxed, or returned not later than ten days from the initial mailing date. The employer did not file a protest until December 31, 2008, which is after the ten-day period had expired.

REASONING AND CONCLUSIONS OF LAW:

The first issue to be considered in this appeal is whether the employer's protest is timely. The administrative law judge determines it is.

Iowa Code section 96.6-2 provides:

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 representative shall promptly

examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The employer did not have an opportunity to file a protest, because the notice of claim was not received until December 31, 2008. Without 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 timely protested the notice of claim. Therefore, the protest shall be accepted as timely.

DECISION:

The January 7, 2009, reference 03, decision is reversed. Employer has filed a timely protest. The claimant has requalified for benefits since the separation and since the prior claim year separation decision. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/kjw