

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL CABALKA
Claimant

APPEAL NO: 13A-UI-09962-ET

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCOTT EXCAVATING LLC
Employer

OC: 08/04/13
Claimant: Respondent (4)

Section 96.6-2 – Timeliness of Protest
Section 96.5 – Requalification for Benefits

STATEMENT OF THE CASE:

The employer/appellant filed a timely appeal from the August 21, 2013, reference 03, decision that concluded it failed to file a timely protest regarding the claimant's separation of employment on April 29, 2012, and no disqualification of unemployment insurance benefits was imposed. After due notice was issued, a hearing was scheduled on September 27, 2013, before Administrative Law Judge Julie Elder. Department's Exhibit D-1 was admitted to the record.

ISSUE:

The issue is whether the employer's protest is timely and whether the claimant has requalified for benefits.

FINDINGS OF FACT:

Having reviewed all of 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 August 4, 2013. The employer did file a protest on August 19, 2013. 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 administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law because it did reply to the notice of claim when it received it. This is sufficient evidence of intent to protest any potential charges to their account. 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 August 21, 2013, 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.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/css