

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

ANTHONY C NELSON
652 W 64TH ST
DAVENPORT IA 52806

CRACKER BARREL
% SHEAKLEY UNISERVICE INC
PO BOX 42212
CINCINNATI OH 45242-0212

Appeal Number: 04A-UI-11257-CT
OC: 09/12/04 R: 04
Claimant: Respondent (2-R)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319**.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Cracker Barrel filed an appeal from a representative's decision dated October 7, 2004, reference 04, which held that the protest to Anthony Nelson's claim was not timely filed. Due notice was issued scheduling the matter for a telephone hearing to be held on November 10, 2004. However, after a review of the employer's protest, it was determined that it had been timely filed. Inasmuch as that was the sole issue for the hearing, a hearing was deemed unnecessary.

FINDINGS OF FACT:

Having reviewed all the evidence in the record, the administrative law judge finds: Mr. Nelson filed a claim for job insurance benefits effective September 12, 2004. Notice of the claim was

mailed to the employer at its address of record on September 15. The notice advised that a protest to the claim had to be filed by September 27. The envelope in which the employer mailed its protest to Mr. Nelson's claim was postmarked September 27, 2004.

REASONING AND CONCLUSIONS OF LAW:

At issue in this matter is whether the employer filed a timely protest to Mr. Nelson's claim as required by Iowa Code section 96.6(2). The postmark on the envelope in which the protest was mailed is conclusive proof that the employer complied with the September 27, 2004 deadline. As such, Workforce Development has jurisdiction over the separation issue. This matter shall be remanded to Claims for a determination regarding Mr. Nelson's separation from Cracker Barrel.

DECISION:

The representative's decision dated October 7, 2004, reference 04, is hereby reversed. The employer's protest to Mr. Nelson's claim was timely filed. This matter is remanded to Claims for a determination regarding the separation from employment.

cfc/b