

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JODIE L KAMPEN
Claimant

APPEAL NO. 09A-UI-04407-AT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DENTAL IMPRESSIONS LLC
Employer

OC: 09/07/08
Claimant: Respondent (4)

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

Dental Impressions, LLC filed a timely appeal from an unemployment insurance decision dated March 17, 2009, reference 01, that declined to relieve the employer of charges for benefits paid to Jodie L. Kampen upon a finding that the employer had failed to file a timely protest in September 2008. After due notice was issued, a telephone hearing was held April 10, 2009 with Ms. Kampen participating. Amanda Foust, Proprietor of Dental Impressions, LLC and CPA Michelle Kilgore-Morton participated for the employer. Exhibit D-1 was admitted into evidence. The administrative law judge takes official notice of Agency wage records.

ISSUE:

Can the employer's protest be accepted as timely?

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having examined all of the evidence in the record, the administrative law judge finds: Jodie L. Kampen filed a claim for unemployment insurance benefits during the week of September 7, 2008. A Notice of Claim was mailed to the employer, at the address of its accountant, on September 9, 2008. Notice of Claim was not delivered to the employer or returned to the Agency. The employer was unaware of the claim. A Statement of Charges for the fourth quarter of 2008 was mailed to the same address. This document was returned to the Agency. The Agency contacted the employer by telephone, providing the employer with the first notice that the claim had been filed. The employer promptly contested the charges.

After Ms. Kampen's employment with Dental Impressions, LLC ended, she earned more than ten times her weekly benefit amount in wages for insured work with another employer.

REASONING AND CONCLUSIONS OF LAW:

The question is whether the employer's protest can be accepted as timely. The administrative law judge concludes that it can. Iowa Code section 96.6-2 gives an employer ten days from the

mailing of the Notice of Claim to file a response known in Agency jargon as the protest. While the ten-day time limit is ordinarily a jurisdictional requirement, additional time may be granted under some circumstances. According to 871 IAC 24.35, additional time may be granted if the delay is the fault of the U. S. Postal Service or the Agency. In such a case, the question becomes one of whether the employer responded within a responsible amount of time after learning of the existence of the Notice of Claim. The administrative law judge concludes from the evidence in the record that the U. S. Postal Service neither delivered the document to the employer's accountant nor returned it to the Agency. The administrative law judge further concludes that the employer responded within a reasonable amount of time after learning of the existence of Ms. Kampen's claim. Under these circumstances, the protest may be accepted as timely and the employer can be relieved of charges.

There is no need for the administrative law judge to inquire as to whether Ms. Kampen's separation from employment with Dental Impressions, LLC is a disqualifying event. This is because the evidence establishes that after working for this employer but before filing her present claim for unemployment insurance benefits, Ms. Kampen earned ten times her weekly benefit amount in wages for insured work with the subject one employer.

DECISION

The unemployment insurance decision dated March 17, 2009, reference 01, is modified. The claimant remains eligible to receive unemployment insurance benefits, provided she is otherwise eligible. No benefits shall be charged to the account of Dental Impressions, LLC.

Dan Anderson
Administrative Law Judge

Decision Dated and Mailed

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