

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HELEN MEYERS
Claimant

APPEAL NO: 06A-UI-08124-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DICKSON INDUSTRIES INC
Employer

OC: 02/12/06 R: 02
Claimant: Respondent (4/R)

Section 96.6-2 – Timeliness of Protest
Section 96.7-2-a(2) – Employer Liability

STATEMENT OF THE CASE:

Dickson Industries, Inc. (employer) appealed a representative's August 11, 2006 decision (reference 03) that concluded Helen Meyers (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on August 28, 2006. The claimant participated in the hearing. Allison Dickson and Harold Hinkle appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

Is the claimant eligible to receive unemployment insurance benefits as of February 12, 2006?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The employer hired the claimant to work full time on August 15, 2005. The claimant worked eight hours on August 15 and 16, 2005. The claimant did not work on August 17, 2005, because she received a call that her son had been involved in a serious accident in California. The claimant went to California to be with her son. Before the claimant left for California, she contacted the employer. The employer told the claimant to contact the employer when she returned to find out if the employer still had a job for her. The claimant did not contact the employer when she returned to home from California.

After August 16, 2005, but prior to February 12, 2006, the claimant worked for another employer and earned more than \$1,550.00 in wages. The claimant established a claim for unemployment insurance benefits during the week of February 12, 2006. On February 21, 2006, a notice of

claim was mailed to the employer. This notice indicated the claimant would receive zero weekly benefits. The employer received the notice of claim on February 22, 2006. Dickson protested by completing the form and indicating the claimant had only worked two days for the employer and then had to quit. Dickson faxed the completed form to the Department on February 22, 2006.

On August 9, 2006, the employer received a statement of quarterly charges. When the employer noticed the claimant received benefits that had been charged to the employer's account, the employer emailed the Department and again protested the claimant's receipt of any benefits that would be charged to the employer's account.

REASONING AND CONCLUSIONS OF LAW:

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts indicate the employer received the notice of claim on February 22, 2006, and faxed a completed protest that same day, February 22, 2006. Even though the Department only acknowledged receipt of the employer's August 9 protest, the employer established that it filed a timely protest on February 22, 2006. Therefore, the Appeals Section has legal jurisdiction to relieve the employer's account from charge. See Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The next issue is whether the employer's account is subject to charge. An employer's account is relieved from charge when a claimant voluntarily quits employment without good cause attributable to the employer or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code § 96.7-2-a (2). The facts establish the claimant voluntarily left her employment on August 17, 2005, for compelling personal reasons that do not constitute good cause attributable to the employer. The employer's account will not be charged.

After the claimant worked for the employer and prior to establishing her claim for benefits, she earned ten times her weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision and she remains qualified to receive unemployment insurance benefits as of February 12, 2006.

The records indicate the employer paid the claimant \$1,773.00 wages in the fourth quarter of 2005 and \$968.00 in wages during the first quarter of 2006. The parties agree the claimant only worked August 15 and 16. The claimant did not receive these reported wages from the employer. An issue of wages that incorrectly indicates the claimant earned wages from the employer after August 16, 2005, is remanded to the Tax Department to investigate and correct.

DECISION:

The representative's August 11, 2006 decision (reference 03) is modified in the employer's favor. The employer filed a timely protest. The employer's account will not be charged. The claimant remains qualified to receive unemployment insurance benefits as of February 12, 2006. An issue of the wages the claimant did not earn from the employer after August 16, 2005, is remanded to the Tax Department to investigate and correct.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw