

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMES C GROSS

Claimant

APPEAL NO: 12A-UI-00885-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADMINISTRATIVE ALTERNATIVES

Employer

OC: 12/25/11

Claimant: Respondent (4)

Iowa Code § 96.6(2) – Timely Protest
Iowa Code § 96.5(1)a – Employer Liability

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's January 18, 2012 determination (reference 01) that held the claimant qualified to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. The claimant participated in the hearing. Lanette Simmons appeared on the employer's behalf. Based on the administrative record, and the law, the administrative law judge finds the claimant qualified to receive benefits and the employer's account exempt from charge.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of December 25, 2011. His maximum weekly benefit amount is \$285. On December 29, 2011, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until January 9, 2012, to protest or respond to the notice.

The employer received the notice of claim on or before January 4, 2012. The employer completed the form and attempted to fax it to the Department on January 4. The fax did not go through. The employer attempted to fax the protest until January 11. On January 11, the Department's fax finally accepted the employer's fax. In an attempt to file a timely protest, the employer tried to fax the form to the Burlington office. The employer later learned the Burlington's office fax had not been working for weeks. The employer even sent an email to Claims in an attempt to file a timely protest.

The claimant quit his employment when he went to work for Lomont Molding in early April 2011. Before the claimant established his claim the week of December 25, 2011, he earned wages of more than \$2,850 from Lomont Molding.

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) that 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 before the January 9, 2012 deadline. The employer established a legal excuse for filing its protest on January 11, 2012. 871 IAC 24.35(2). When the Department allows employers to fax in a protest, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. Based on the evidence, the Appeals Section has legal jurisdiction to relieve the employer's account from charge.

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 attributable to the employer or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code § 96.7(2)a. Also, under Iowa Code § 96.5(1)a, an employer's account is relieved from charge when a claimant quits for other employment. The facts establish the claimant voluntarily quit his employment to work for another employer, Lomont Molding. The employer's account will not be charged.

In addition to quitting to work for another employer, Iowa Code § 96.5(1)a, the claimant worked and earned ten times his weekly benefit amount from subsequent employment before he established his claim for benefits. As a result, there is no legal consequence to the claimant as a result of this decision. He remains qualified to receive benefits.

DECISION:

The representative's January 18, 2012 determination (reference 01) is modified in the employer's favor. The employer established a legal excuse for filing a late protest. Therefore, the Appeals Section has jurisdiction in this matter. The employer's account will not be charged. Based on this employment separation, as of December 25, 2011, the claimant remains qualified to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw