

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

HAROLD A BRETT

Claimant

APPEAL NO: 10A-UI-17083-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 04/18/10

Claimant: Respondent (4)

Iowa Code § 96.7(2)a(2) – Employer Liability

Iowa Code § 96.6(2) – Timeliness of Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 14, 2010 determination (reference 03) that held the claimant qualified to receive benefits and the employer's account subject to charge because the employer had not made a timely protest. The claimant participated in a January 27, 2011 phone hearing. Lea Peters participated on the employer's behalf.

This matter was reopened for the claimant to submit additional documentation. The claimant submitted all the documents the administrative law judge requested on February 14, 2011. The last document submitted were copies of W-2 statements the claimant received from the employer and Allen Freight Services, Inc. for wages he earned in 2009 and a W-2 statement for wages he earned from P.A.M. Transport, Inc. in 2010. The W-2 copies are admitted as Exhibit A for this decision.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the claimant qualified to receive benefits as of April 18, 2010, and the employer's account is not subject to charge.

ISSUES:

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

Is the employer's account subject to charge?

Is the claimant qualified to receive benefits as of April 18, 2010?

FINDINGS OF FACT:

The claimant started working for the employer in late December 2004. He worked as a full-time over-the-road driver. The employer discharged him on September 16, 2009. The employer discharged the claimant for failing to follow the employer's policy by taking a required break on September 9, 2009. The employer had talked and counseled the claimant about issue before. The employer counseled the claimant about this issue on February 21, 2009. The claimant

received another warning on April 29, 2009. On July 17, 2009, the claimant received another warning about taking required breaks.

The claimant started working for P.A.M. Transport on November 5, 2009. Employment with P.A.M. Transport ended on April 14, 2010. In 2010, P.A.M. Transport reported the claimant earned wages totaling over \$9,000.00.

The claimant established a claim for benefits during the week of April 18, 2010. His maximum weekly benefit amount is \$374.00. A notice of claim was mailed to the employer on April 27, 2010. The notice of claim informed the employer that the claimant had filed a claim for benefits and the total amount that could be charged to the employer's account during the claimant's benefit year. The notice of claim also informed the employer the due date to protest charges to its account was May 7, 2010. The employer's human resource representative completed the notice of claim and faxed it to the Department on May 3, 2010.

When the employer did not receive a notice of a fact-finding interview, the employer assumed the claimant was not receiving unemployment insurance benefits. On December 8, 2010, after the employer received a statement of charges for the third quarter of 2010, the employer faxed a copy of the completed May 3, 2010 protest. The Department acknowledged receipt of this protest and considered the employer to have filed its protest as of December 8, 2010.

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 determination states an appeal must be filed within ten days after notification of that determination 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 evidence shows the employer initially filed a protest about the claimant's benefits charged against the employer's account on May 3, 2010. Even though the Department asserted it had not received the employer's fax, the employer's testimony is credible. The employer filed a timely protest on May 3, 2010. Therefore, the Appeals Section has legal jurisdiction to relieve the employer's account from charge.

First, after the claimant worked for the employer but prior to establishing his claim for benefits during the week of April 18, 2010, he earned at least ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

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. Based on the evidence presented during the hearing, the employer discharged the claimant for an issue he had been talked to and warned about several times since February 2009. As a result of the claimant's failure to follow the

employer's directions, he committed work-connected misconduct. The employer's account will not be charged.

DECISION:

The representative's December 14, 2010 determination (reference 03) is modified in the employer's favor. The employer filed a timely protest. Therefore, the Appeals Section has jurisdiction in this matter. The employer discharged the claimant in mid-September 2009 for reasons that constitute work-connected misconduct. Since the claimant has earned more than ten times his weekly benefits after he worked for the employer but before he established his claim for benefits, he is qualified to receive benefits as of April 18, 2010. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs