

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**GREG A SMITH**  
Claimant

**APPEAL NO: 12A-UI-12371-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FTC ENTERPRISES INC**  
Employer

**OC: 09/16/12**  
**Claimant: Respondent (4)**

Section 96.5-1-a – Voluntary Quit for Other Employment  
Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated October 9, 2012, reference 02, that concluded its protest could not be accepted because it was not filed timely. A telephone hearing was held on November 8, 2012. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Brad Loney participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

**ISSUES:**

Did the employer file a timely protest of the claim?

Did the claimant voluntarily quit employment to accept other employment?

**FINDINGS OF FACT:**

The claimant worked for the employer starting in 2010 as a pizza maker. His last day of work was March 29, 2012. The claimant quit employment to accept another job with AJ Allen Mechanical Contractors.

A notice of claim was mailed to the employer's address of record on September 20, 2012. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of October 1, 2012. Due to a delay by the United States Postal Service, the notice of claim was not received by the employer until after the deadline for protesting expired. The employer's protest was mailed on October 6, 2012, immediately after the notice of claim was received.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

The law states that an employer must file its protest of an unemployment insurance claim within ten days after the notice of claim was mailed to the employer's last known address. Iowa Code § 96.6-2.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code § 96.6-2. But the failure to file a timely protest was due to delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing the protest. The protest is deemed timely.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1. But, a claimant who quits employment to accept another job is not subject to disqualification and the employer's account is not chargeable for benefits paid to the claimant. Iowa Code § 96.5-1-a.

As a result of the law, the claimant is qualified to receive benefits, if he is otherwise eligible, and the employer will not be charged for any benefits paid to the claimant.

**DECISION:**

The unemployment insurance decision dated October 9, 2012, reference 02, is modified in favor of the employer. The employer's protest is deemed timely. The claimant is qualified to receive benefits, if he is otherwise eligible, and the employer will not be charged for any benefits paid to the claimant.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw