

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JEREMIE L FRANCIS
Claimant

APPEAL 17A-UI-03778-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEABOARD FOODS SERVICES INC
Employer

**OC: 12/04/16
Claimant: Respondent (4)**

Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the March 28, 2017, (reference 02) decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to Iowa Admin. Code r. 871-24.9(2)b. After due notice was issued, a hearing was scheduled to be held by telephone conference call on May 1, 2017. Claimant participated. Employer participated through Melinda Leritz, Client Relationship Manager. Employer's Exhibit 1 was received.

ISSUES:

Was the employer's protest timely?
Is the claimant's separation disqualifying?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was sent to the employer on December 5, 2016. The employer filed a protest on December 15, 2016. The claimant quit to accept other employment.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

2. *Initial determination.* A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

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. Iowa Dep't of Job Serv.*, 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 employer received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). When the Department allows employers to submit a protest by fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. Based on the evidence, the Appeals Bureau has legal jurisdiction to determine whether the employer's account can be relieved from charges.

Iowa Code section 96.5(1)a provides:

An individual shall be disqualified for benefits:

1. *Voluntary quitting.* If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The March 28, 2017, (reference 02) decision is modified in favor of the appellant. The employer has filed a timely protest, and the claimant quit to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/rvs