

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY A REED
Claimant

APPEAL NO. 06A-UI-10634-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

DLM INC
Employer

**OC: 10/01/06 R: 12
Claimant: Respondent (2)**

Section 96.7-2-a(2) – Charges to the Employer’s Account
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 26, 2006, reference 01, that concluded it had failed to file a timely protest regarding the claimant's separation of employment. A telephone hearing was held on November 13, 2006. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Lori Bentley participated in the hearing on behalf of the employer. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show that Iowa is not the liable state and only the issue of whether the employer should be charged for benefits paid to the claimant is to be decided. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

ISSUE:

Did the employer file a timely protest of the claim?

Is the employer's account subject to charge for benefits paid to the claimant?

FINDINGS OF FACT:

The claimant worked part-time for the employer as a dishwasher from June 14 to June 23, 2006. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer if they were not able to work as scheduled. The claimant was scheduled to work on June 24 and 25, 2006. On June 24, the claimant called in and notified the employer that he was going to be late for work. He did not report work at all or call again to notify the employer that he would not be at work. On June 25, 2006, the claimant was absent from work again without proper notice. As a result, the employer discharged him.

A notice of claim was mailed to the employer's address of record on October 5, 2006, and was received by the employer on October 21 due to some mistake by the United States Postal Service, which caused the notice of claim to be placed inside another mailing. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of October 16, 2006. The employer's protest was faxed on October 21, 2006, which was after the time period for protesting had expired. The employer's secretary-treasurer immediately responded when it received the notice of claim.

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

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.

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 section 96.6-2. The failure to file a timely protest, however, 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 since the employer did not have a reasonable opportunity to file a timely protest since it was received after the due date.

Since Iowa is not the paying state in this case, the only issue is whether the employer's account is subject to charge for benefits paid to the claimant. Iowa Code section 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The claimant's violation of a known work rule was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Work-connected misconduct as defined by the unemployment insurance law has been established in this case. The employer's account is exempt from charge for benefits paid to the claimant because he was discharged for work-connected misconduct.

DECISION:

The unemployment insurance decision dated October 26, 2006, reference 01, is reversed. The employer's protest was timely, and the employer's account is exempt from charge.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw