

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SALLY J GORMAN
Claimant

APPEAL NO: 06A-UI-09067-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ANN E SVOBODA
Employer

**OC: 02/05/06 R: 03
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated August 29, 2006, reference 04, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on September 25, 2006. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Angela Svoboda participated on behalf of the employer.

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 as a caregiver from December 2003 to April 17, 2005. She voluntarily quit employment with two weeks' notice to the employer to accept another job with Creative Croissants for which she worked until February 9, 2006.

A notice of claim was mailed to the employer's address of record on February 13, 2006, but it was not received by the employer within ten days because the employer's designated representative was in Arizona for the winter and the mail was not forwarded to her in a timely manner even though she had provided the United States Postal Service with a proper forwarding address. As a result, the employer did not protest the claim but instead filed an appeal from the quarterly statement of benefit charges within 30 days of the date that it was mailed to the employer.

REASONING AND CONCLUSIONS OF LAW:

The first 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).

The employer failed to file a protest within the time period prescribed by Iowa Code section 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 next issue in this case is whether the claimant voluntarily quit employment to accept other employment.

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.

The claimant left work to accept other employment and performed services in that new employment. Pursuant to the statute, the employer's account will not be charged for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated August 29, 2006, reference 04, is modified in favor of the employer. The protest is deemed timely. The claimant is not subject to disqualification based on her separation from the employer. The employer's account will be exempt from charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/cs