

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETTY M GARMOE

Claimant

NEW CHOICES INCORPORATED

Employer

APPEAL NO: 12A-UI-13686-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/14/12

Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest

Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a department decision dated November 8, 2012, reference 03, that held it failed to file a timely protest regarding claimant's employment separation on January 14, 2012, and benefits are allowed. A telephone hearing was held on December 18, 2012. The claimant participated. Dave Jessen, HR Coordinator, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant filed an unemployment claim effective October 14, 2012. The department mailed a notice of claim to the employer's address of record on October 22 with a protest due date of November 1. The employer submitted a protest by fax to the department on November 6. The employer representative does not recall when the employer received the claim and the signature date on it is erroneous (November 10, 2011).

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer failed to file a timely protest. The protest was faxed on November 6 that is after the ten-day deadline and the employer could not establish the delay was due to delivery or department error.

DECISION:

The department decision dated November 8, 2012, reference 03, is affirmed. The employer failed to file a timely protest, and the department decision regarding claimant's January 14, 2012 employment separation remains in force and effect. Benefits are allowed, provided claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs