

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DUSTIN J CAMPBELL
Claimant

APPEAL NO: 09A-UI-07243-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CAMBRIDGE TEMPOSITIONS INC
Employer

OC: 02/15/09
Claimant: Respondent (1)

Section 96.5-1-j – Separation from Temporary Employment Company
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated May 13, 2009, reference 02, 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 for June 5, 2009. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Stephanie Matteson participated on behalf of the employer with a witness, Elaine Pruett. Exhibits One through Three were admitted at the hearing

ISSUE:

Did the employer file a timely protest of the claim?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from February 21, 2008, to June 27, 2008. When the claimant was hired, he signed a statement that he would be considered to have voluntarily quit employment if he did not contact the employer within three working days after the completion of a job assignment and request a new assignment.

The claimant's last assignment was a packaging job at VAS Company. He was told to leave VAS on June 27, 2008, due to a suspicion that he had started a fire by flicking a cigarette butt. This allegation was untrue, but he was removed from the assignment. That afternoon the claimant reported to the employer's office and asked for his check and told the secretary he was available for another assignment. The secretary gave the claimant his check and said she would take care of it. The claimant went back the following week to pick up his final check and again indicated he was available for another assignment.

A notice of claim was mailed to the employer's address of record on February 20, 2009, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of March 2, 2009. The employer's protest was faxed on May 11, 2009, which was after the time period for protesting had expired.

Although the employer alleged in its appeal that they had faxed the protest in on February 23, 2009, the employer did not participate in the appeal hearing to present proof of its allegations.

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).

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 was due to an Agency error, which under 871 IAC 24.35(2) excuses the delay in filing the protest.

The next issues is whether the claimant is disqualified based the reasons for his separation from employment. Iowa Code section 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. I believe the claimant's testimony about what happened on June 27, 2008. The claimant satisfied the requirements of Iowa Code section 96.5-1-j and is eligible for benefits.

DECISION:

The unemployment insurance decision dated May 13, 2009, reference 02, is affirmed. The employer filed a timely protest. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css