

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESSICA L EDWARDS
Claimant

APPEAL NO: 10A-UI-11234-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**LUTHER CARE SERVICES/HOMES FOR
THE AGING**
Employer

OC: 04/25/10

Claimant: Respondent (5)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Luther Care Services/Homes for the Aging (employer) appealed a representative's August 6, 2010 decision (reference 04) that concluded Jessica L. Edwards (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 29, 2010. The claimant participated in the hearing. Phyllis Seals appeared on the employer's behalf and presented testimony from one other witness, Amy Thomas. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the employer's protest timely? Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective April 25, 2010. A notice of claim was mailed to the employer's third party representative's last-known address of record on May 5, 2010. The employer's representative received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by May 17, 2010. The employer's representative faxed a protest letter to the Agency on May 17. Also, the notice of claim had indicated that there would be a fact-finding interview regardless of whether the employer made a protest. However, no fact-finding interview was conducted. When no decision was issued on the separation, and the employer found its account was being charged after receiving a quarterly statement of charges, it renewed its protest on July 27, 2010.

The claimant started working for the employer on November 17, 2009. She was to work full-time as a universal worker in one of the employer's assisted living units. Her last day of work was April 25, 2010. She submitted her written notice of resignation on April 16. She had

intended her last day of work to be May 1, but subsequently decided not to continue working after April 25. Her reason for leaving was that the position she was being scheduled to work was not as she had been informed upon hire. The position was much more as a certified nursing aide (CNA) working with persons with more serious physical and mental limitations, as compared to merely assisting persons with fewer needs. Also, she was told she would be working full time, but she was not being scheduled for full-time hours; the only weeks she worked over 32 hours was when she filled in for other employees on their shifts.

REASONING AND CONCLUSIONS OF LAW:

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 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. IDJS, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes the employer's representative placed a completed protest into the custody of the Agency on May 17, 2010, within the time for filing a timely protest. Further, the notice to the employer's representative had indicated that there would be a fact-finding interview regardless of the filing of a protest. The administrative law judge concludes that failure to have the protest treated as received within the time prescribed by the Iowa Employment Security Law was due to error, delay or other action of the Agency pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2.

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1. A substantial change in contract of hire is recognized as grounds that are good cause for quitting that is attributable to the employer. 871 IAC 24.26(1).

"Good cause attributable to the employer" does not require fault, negligence, wrongdoing or bad faith by the employer, but may be attributable to the employment itself. Dehmel v. Employment Appeal Board, 433 N.W.2d 700 (Iowa 1988); Raffety v. Iowa Employment Security Commission, 76 N.W.2d 787 (Iowa 1956). While the employer may have had a good business reason for not providing the claimant with the same duties and hours as had been described to her upon hire, the change was a substantial change in the claimant's contract of hire. Dehmel, supra. Benefits are allowed.

DECISION:

The August 6, 2010 (reference 04) decision is modified with no effect on the parties. The protest in this case was timely. The claimant voluntarily quit for good cause attributable to the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs