

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

GARY A YADDOF
Claimant

APPEAL NO: 14A-UI-04562-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVEKA NUTRA PROCESSING
Employer

OC: 04/06/14

Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

Aveka Nutra Processing (employer) appealed a representative's April 22, 2014 decision (reference 01) that concluded Gary A. Yaddof (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 June 4, 2014. The claimant received the hearing notice and responded by indicating he would be available to participate in the hearing. When the administrative law judge contacted him at the time for the hearing and explained that the hearing was only regarding the timeliness of the employer's protest and that his eligibility was not in jeopardy as a result of the appeal, the claimant agreed that he did not need to participate in the hearing. Kelli Best appeared on the employer's behalf. During the hearing, Exhibit A-1 and Employer's Exhibit One were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the employer's protest be treated as timely? Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective April 6, 2014. A notice of claim was mailed to the employer's last known address of record on April 8, 2014. The employer received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by April 18, 2014. The protest was not treated as being filed until April 21, 2014, which is after the date noticed on the notice of claim. However, the employer established that it had successfully faxed the notice to the Agency shortly after 5:00 p.m. on April 18.

The employer asserted that the claimant voluntarily left his employment as of September 24, 2013 to take other employment. Agency records do indicate that the claimant earned wages in other employment which began on or about September 30, 2013, earning even enough to have requalified from his separation from the employer had his September 24 separation been disqualifying.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this matter is whether the employer filed a timely protest. 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 successfully transmitted a completed protest by facsimile to the Agency on April 18, 2014, within the time for filing a timely protest. The administrative law judge concludes that failure to have the protest treated as having been made within the time prescribed by the Iowa Employment Security Law was due to error, delay or other action of the Agency to Rule 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2.

The substantive issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer. One reason a voluntary quit is non-disqualifying is if an employee quits for the reason of accepting and entering into new employment. Iowa Code § 96.5-1-a. The administrative law judge concludes from information contained in the administrative record that the claimant did voluntarily quit in order accept a bona fide offer of other employment. The claimant is not disqualified from receiving benefits as a result of his quit from the employer in this case, but the employer's account will not be charged.

DECISION:

The representative's April 22, 2014 decision (reference 01) is modified in favor of the employer. The employer's protest is treated as timely. The claimant voluntarily left his employment with the employer, but the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits, provided he is otherwise eligible. The employer's account will not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs