

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BETH PATTON
Claimant

APPEAL NO. 08A-UI-02783-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VON MAUR INC
Employer

**OC: 07/29/07 R: 12
Claimant: Respondent (2)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Von Maur, Inc. (employer) appealed a representative's March 10, 2008 decision (reference 01) that concluded the employer's account could not be relieved from charge because the employer had not timely protested Beth Patton's (claimant) employment separation. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 7, 2008. Prior to the hearing, the claimant informed the Appeals Section she was not available for the hearing because she works 8:30 a.m. to 4:30 p.m. and is unable to take any personal phone calls during this time. The hearing was not continued. Heather Barker and Heather Purlee appeared on the employer's behalf. 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:

Did the employer file a timely protest?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant worked for the employer from June 20, 2005 through February 23, 2007. The claimant gave the employer a two-week notice that she was resigning. The claimant resigned because she found a job closer to her home.

The claimant established an Illinois claim for benefits during the week of July 29, 2007. On August 7, 2007, the Department's Interstate Claims Unit sent the employer's unemployment insurance representative, TALX, a notice of wage transfer. TALX received the notice of wage transfer on August 10, 2007. On August 14, a TALX representative mailed a letter to the Department's Interstate Claims Unit. The August 14 letter indicated the employer's account should not be charged because claimant had voluntarily quit to accept other employment. After sending this protest, TALX assumed its account would not be charged.

After TALX received a statement of charges for the employer and noticed the benefits paid to the claimant in the fourth quarter of 2007 had been charged to the employer, TALX again protested on

March 4, 2008. The Department acknowledged receipt of the March 4 protest and then issued the March 10 decision indicating the employer had not filed a timely protest.

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 Supreme 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 reasoning and holding of the Beardslee court is considered 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. This reasoning is also applicable to wages credits that are transferred to other states when an interstate claim has been filed. 871 IAC 23.43(9).

The facts indicate the employer's representative, TALX, received the notice of wage transfer on August 10, 2007. The evidence also establishes a TALX representative made a timely protest on August 14, or within the ten-day deadline. Under the facts of this case, the employer filed a timely protest. Therefore, there is legal jurisdiction to relieve the employer's account from charge. See Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The next issue is whether the employer's account is subject to charge. An employer's account is relieved from charge when a claimant voluntarily quits employment without good attributable to the employer or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code § 96.7-2-a. Also, under Iowa Code § 96.5-1-a an employer's account is relieved from charge when a claimant quits for other employment. The facts establish the claimant voluntarily quit her employment to work for another employer. Therefore, the employer's account will not be charged.

DECISION:

The representative's March 10, 2008 decision (reference 01) is reversed. The employer filed a timely protest from the August 7 notice of wage transfer. The employer's account will not be charged, because the claimant quit because she accepted other employment.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw