

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**RODNEY A HUSK**  
Claimant

**APPEAL NO. 13A-UI-00188-LT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BOMGAARS SUPPLY INC**  
Employer

**OC: 12/09/12**  
**Claimant: Respondent (4-R)**

Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment  
Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the January 3, 2013 (reference 01) decision that found the employer's protest untimely and allowed benefits. After due notice was issued, a hearing was held by telephone conference call on February 8, 2013. Claimant participated. Employer participated through human resources associate Cathy Crowl. Department's Exhibit D-1 was received.

**ISSUES:**

Was the employer's protest timely?  
Did claimant voluntarily leave the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer received the Notice of Claim on December 28, 2012 and filed the protest on the same day.

Claimant was employed full-time as a truck driver and dock worker and was separated from employment on April 6, 2012. On April 2 he gave his notice of intention to quit effective April 13, 2012 because he had accepted employment with Tegra Corporation, Big Soo Terminal, at 518 8th Street, Sioux City, Iowa 51101. He also turned in a leave request on April 2, along with his resignation notice, for April 6 and 9. Crowl told him the request was denied. He was discharged when he called in sick on April 6. Claimant did not claim benefits between April 6 and April 16, 2012. He began work part-time for Tegra in March 2012 and went full-time on April 16, 2012. He was laid off permanently from Bomgaars on December 7, 2012. He has requalified for benefits since his separation from Bomgaars. A missing wage investigation related to Bomgaars shall be initiated if claimant has not already done so via the Sioux City IWD local office.

**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.

The administrative law judge concludes that the employer filed a timely protest because the Notice of Claim was not received until after the expiration of the protest period and the protest was filed the same day it was received. This is sufficient evidence of intent to protest any potential charges to their account.

Iowa Code section 96.5-1-a provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:
  - a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

**DECISION:**

The January 3, 2013 (reference 01) decision is modified in favor of the appellant. The employer has filed a timely protest, and the claimant quit to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

**REMAND:**

The Tegra Corporation missing wage issue delineated in the findings of fact is remanded to UISC, Iowa Workforce Development for an investigation and determination.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs