IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

THERESA M WORRALL
383 – 15TH ST SE
CEDAR RAPIDS IA 52403

D AND B CRISPEN INC
SISTERS
1107 A AVE W
OSKALOOSA IA 52577

Appeal Number: 06A-UI-03701-DT
OC: 12/04/05 R: 03
Claimant: Respondent (4)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the ***Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319***.

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

_____
(Administrative Law Judge)

_____
(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

D and B Crispen, Inc. (employer) appealed a representative's March 20, 2006 decision (reference 05) that concluded Theresa M. Worrall (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 April 20, 2006. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Dorothy Swim appeared on the employer's behalf. During the hearing, Exhibits A-1 through A-3 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.

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective December 4, 2005. A notice of claim was mailed to the employer's last known address of record in Eddyville, Iowa, on December 12, 2005. The employer did not receive the notice; the employer had closed its restaurant in Eddyville at the end of August 2005 and not yet opened its restaurant in Oskaloosa, Iowa. The employer had arranged for forwarding of mail sent to the Eddyville address, but had other mail in addition to this notice of claim that was lost and not forwarded. The notice contained a warning that a protest must be postmarked or received by the Agency by December 22, 2005. The protest was not filed until the employer received the fourth quarter 2005 statement of charges mailed on or about February 9, 2006; the employer then protested the claim on February 16, 2006, which is after the date noticed on the original notice of claim.

The claimant worked at the employer's restaurant as a waitress. Her last day of work was on or about April 22, 2005. The employer asserted that she quit by walking out during her shift. When she established her claim for unemployment insurance benefits, her weekly benefit amount was determined to be $82.00. Agency records show that after the claimant's separation from this employer, she earned insured wages from another employer exceeding $820.00.

REASONING AND CONCLUSIONS OF LAW:

The 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 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 administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code section 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 that the employer's representative did not receive the notice of claim until receiving the quarterly statement of charges on or about February 9, 2006. The employer was not responsible for the delay in receiving the notice of claim, but the delay was due to department error or misinformation or delay or other action of the United States Postal Service. The employer did file its protest within ten days of actually being informed of the claimant's claim. 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.

Iowa Code section 96.5-1-g 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:
>
> g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The claimant did express her intent not to return to work with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code section 96.6-2. The claimant has not satisfied her burden.

However, the administrative law judge further concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The representative's March 20, 2006 decision (reference 05) is modified in favor of the appellant. The employer's protest was timely. The claimant voluntarily left her employment without good cause attributable to the employer, but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

ld/kkf