

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

STACY S STOHR
Claimant

APPEAL NO. 07A-UI-07705-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

PAIGE, CLARENCE E
WINGS OF JONATHAN LIVINGSTON
Employer

OC: 07/15/07 R: 03
Claimant: Respondent (4)

Iowa Code Section 96.5(1)(a) – Quit to Accept Other Employment
Iowa Code Section 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Clarence Paige, doing business as Wings of Jonathan Livingston, filed an appeal from the August 3, 2007, reference 01, decision that allowed benefits and found the employer's protest untimely. After due notice was issued, a hearing was held by telephone conference call on August 27, 2007. Claimant Stacy Stoehr participated. Owner Clarence Paige represented the employer. The administrative law judge took official notice of the Agency's administrative file and received Department Exhibits D-1 and D-2 into evidence.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.

Whether good cause existed for a late filing of the protest.

Whether the claimant voluntarily quit the employment for good cause attributable to the employer.

Whether the claimant voluntarily quit in good faith for the sole purpose of accepting other employment and performed services for the new employer.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Stacy Stoehr established a claim for benefits that was effective July 15, 2007 and received benefits. On July 19, 2007, Iowa Workforce Development mailed a Notice of Claim to the employer at the employer's address of record, a Waterloo post office box. The Notice of Claim was received at the employer's address of record in a timely fashion, prior to the protest deadline. The Notice of Claim indicated on its face a protest deadline of July 30, 2007. The employer was out of town at the time Iowa Workforce Development mailed the Notice of Claim and did not see the Notice of Claim until July 30, 2007. The employer completed the protest form on July 30, placed the protest in a stamped envelope and delivered the protest to the local post office on July 30. The Waterloo post office did not postmark the protest envelope until the following day, July 31, 2007.

Stacy Stoehr was employed by Clarence Paige, doing business as Wings of Jonathan Livingston (Wings) as a part-time cook from April 2006 until September 16, 2006, when he quit to accept full-time employment in Arizona. Mr. Stoehr left the employment at Wings in part because he lived 30 miles away from the workplace and did not received sufficient hours to make the employment gainful. Mr. Stoehr knew the distance to the workplace when he accepted the employment. There was no significant change in Mr. Stoehr's hours during the employment. Mr. Stoehr had accepted the Arizona position prior to quitting his employment at Wings. Mr. Stoehr performed services for the Arizona employer. Since separating from Wings, Mr. Stoehr has earned more than ten times his weekly benefit amount of \$170.00 from insured work.

REASONING AND CONCLUSIONS OF LAW:

871 IAC 24.35(1) and (2) provide:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

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 evidence in the record indicates that the employer's protest was filed on July 31, 2007, the date shown on the legible postmark. This was one day after the deadline for appeal. The evidence further indicates that the employer acted in good faith to file a timely protest and that the one day delay in the effective filing date was attributable to delay on the part of the United States Postal Service. Good cause exists to deem the employer's protest timely.

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.

The evidence in the record indicates that Mr. Stoehr left the employment with Wings without good cause attributable to the employer. The indicates that Mr. Stoehr left the employment with Wings in good faith for the sole purpose of accepting new employment and performed work for the new employer. Pursuant to Iowa Code section 96.5(1)(a), Mr. Stoehr is eligible for benefits, provided he is otherwise eligible, but the employer's account will not be charged.

DECISION:

The Agency representative's August 3, 2007, reference 01, decision is reversed in part and modified in part in favor of the employer/appellant. There is good cause to deem the employer's protest timely. The claimant voluntarily quit in good faith for the sole purpose of accepting new employment and performed work for the new employer. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account will not be charged.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/css