

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

VESTA A STAMMER
Claimant

APPEAL NO: 09A-UI-08683-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAL-MART STORES INC
Employer

**OC: 03/01/09
Claimant: Respondent (4)**

Section 96.7-2-a(2) – Charges to the Employer
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 10, 2009, reference 01, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on July 2, 2009. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Ryan Flanery participated on behalf of the employer. Exhibits A-1 and A were admitted into evidence at the hearing.

ISSUES:

Did the employer file a timely protest of the claim?

Is the employer's account subject to charge for benefits paid to the claimant?

FINDINGS OF FACT:

The claimant worked for the employer until May 5, 2008, when she voluntarily quit employment. Her quit was not caused by the employer. Afterward, the claimant worked for Temp Associates from September 2008 to December 31, 2008. During the time she worked for Temp Associates, she was paid \$7,226.00. The claimant filed a new claim for unemployment insurance benefits with an effective date of March 1, 2009. Her weekly benefit amount was determined to be \$228.00.

A notice of claim was mailed to the employer's address of record on March 6, 2009, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of March 16, 2009. The employer's protest was mailed on March 9, 2009, but due to an Agency or United States Postal Service error it was not received. The employer filed a timely appeal from the first quarter statement of benefit charges when it discovered that wages paid to the claimant were charged to the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

Iowa Code § 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The employer filed a protest within the time period prescribed by Iowa Code § 96.6-2. The failure of the Agency to receive a timely protest was due to an Agency error or delivery error by the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing the protest. The protest is deemed timely.

Iowa Code § 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The employer's account is not subject to charge for benefits paid to the claimant because of her voluntarily quit employment without good cause attributable to the employer.

The claimant is qualified for unemployment insurance benefits because she has sufficient wages from Temp Associates to satisfy any possible disqualification.

DECISION:

The unemployment insurance decision dated June 10, 2009, reference 01, is modified in favor of the employer. The employer's account is not subject to charge for benefits paid to the

claimant. The claimant is qualified for unemployment insurance benefits because she has sufficient wages from Temp Associates to satisfy any possible disqualification.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css