

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JOHN H SPICKERMAN

Claimant

APPEAL NO. 09A-UI-08674-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

Original Claim: 12/21/08

Claimant: Respondent (2/R)

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Protest
Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

Heartland Express, Inc. of Iowa (employer) appealed a representative's June 15, 2009 decision (reference 01) that concluded John H. Spickerman (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 July 6, 2009. The claimant participated in the hearing. Lea Peters appeared on the employer's behalf and presented testimony from one other witness, Dave Dalmasso. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the employer's protest timely?

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective December 21, 2008. A notice of claim was mailed to the employer's last known address of record on December 23, 2008. The employer received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by January 2, 2009. The protest was not noted as filed until the employer further protested a May 8, 2009 quarterly statement of charges, which was after the date noticed on the notice of claim. The employer's human resources representative, Mr. Dalmasso, had personally completed the protest form on December 29, 2008 and had personally observed the protest be successfully processed through the employer's fax machine for transmission to the Agency Claims Section without any error.

The claimant started working for the employer on December 7, 2005. He worked full time as an over-the-road truck driver. His last day of actual work was September 25, 2008.

On September 26, the claimant was on personal time when he passed out. As a result of this occurrence, the claimant was referred by the attending medical practitioners for a neurological examination and not allowed by the doctors to return to driving duties. He informed the employer and was placed on FMLA (Family Medical Leave) status effective September 26. His FMLA was scheduled to end on November 28. He was in some contact with a representative of the employer and indicated he was scheduled to return to his doctor in early December, so the leave was extended through December 10.

On about November 26, he faxed to the employer a certification from the neurologist indicating that due to the possible seizure, the doctor would only release the claimant to return to work if the transportation motor vehicle division would allow the claimant to drive commercially. The claimant submitted to a Department of Transportation physical on December 5, but did not pass. On December 10, he was referred to a cardiologist and told he had a low pulse and might need a pacemaker. He did not recontact the employer after December 10, because he understood if he was not released and could not return to work by that date, the employer would no longer hold his position for him. The claimant has had some medical improvement, but has not presented any release to return to work with the employer and has not attempted to return to work with the employer.

The claimant has received unemployment insurance benefits after the separation from employment.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the employer's protest can be treated as timely. 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 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 that 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 the employer's representative properly transmitted a completed protest to the Agency within the time for filing a timely protest. The administrative law judge concludes that the failure to have the protest received and noted as received within the time prescribed by the Iowa Employment Security Law was due to error, delay, or other action of the Agency

pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the protest and appeal.

A claimant is not eligible for unemployment insurance benefits if he quit the employment without good cause attributable to the employer or was discharged for work-connected misconduct. A voluntary quit is a termination of employment initiated by the employee – where the employee has instigated the action that directly results in the separation; a discharge is a termination of employment initiated by the employer – where the employer has instigated the action that directly results in the separation from employment. 871 IAC 24.1(113)(b), (c). A mutually agreed-upon leave of absence is deemed a period of voluntary unemployment. 871 IAC 24.22(2)j. However, if at the end of the leave of absence the employer fails to reemploy the employee-individual, the individual is considered laid off and eligible for benefits; and, conversely, if at the end of the leave of absence the employee fails to return at the end of the leave of absence and subsequently becomes unemployed, the employee is considered as having voluntarily quit and therefore is ineligible for benefits. Id.

Here, the claimant failed to return at the end of the leave of absence, and is therefore deemed to have voluntarily quit the employment. The claimant therefore has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. Where the quit is for medical or health reasons, the quit is disqualifying at least until the claimant has recovered and seeks to return to work unless the medical or health issue is attributable to the employer. Iowa Code § 96.5-1; 871 IAC 24.25(35); 871 IAC 24.26(6)b.

A “recovery” under Iowa Code § 96.5-1-d means a complete recovery without restriction. Hedges v. Iowa Department of Job Service, 368 N.W.2d 862 (Iowa App. 1985). The claimant has not shown he has been released to return to full work duties, and has not attempted to return to work with the employer. Accordingly, the separation is without good cause attributable to the employer and benefits must be denied until or unless he is fully released and does attempt to return to work with the employer. The claimant has not satisfied his burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. However, the overpayment will not be recovered when it is based on a reversal on appeal of an initial determination to award benefits on an issue regarding the claimant’s employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The representative’s June 15, 2009 decision (reference 01) is reversed. The protest in this case was timely. The claimant voluntarily left his employment without good cause attributable to the employer. As of December 10, 2008, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible, or until he has been released to return to work and seeks to do

so. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw