

**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**

**JOSHUA A BOHRN
1565 NW 84TH ST APT 4
CLIVE IA 50325-1052**

**RUBBERMAID INC
2800 INDUSTRIAL PARK RD
CENTERVILLE IA 52544**

**Appeal Number: 06A-UI-06277-S2T
OC: 12/18/05 R: 02
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
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed the representative's decision dated June 8, 2006, reference 03, that concluded it failed to file a timely protest regarding the claimant's separation of employment on May 6, 2005, and no disqualification of unemployment insurance benefits was imposed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 10, 2006. The claimant did not provide a telephone number where he could be reached and, therefore, did not participate. The employer participated by Becky Fowler, Human Resources Manager.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant was hired on July 25, 2004 as a full-time processor. The claimant quit work on May 5, 2005 to take a job with a different employer. Continued work was available had the claimant not resigned.

The claimant's notice of claim was mailed to the employer's address of record on or about December 20, 2005, but never received by the employer. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer did not effect a protest until after the ten-day period had expired because it did not know the claim existed.

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that 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 that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has shown good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge has jurisdiction to entertain any protest regarding the separation from employment.

The administrative law judge concludes the employer failed to effect a timely protest within the time period prescribed by the Iowa Employment Security Law, and the delay was due to Agency error or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the employer has effected a timely protest pursuant to Iowa Code section 96.6-2, and the administrative law judge has jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The issue now becomes whether the claimant voluntarily quit work without good cause attributable to the employer. For the following reasons the administrative law judge concludes he did.

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 claimant left his position with the employer to work for another employer. When an employee quits work to take other employment, he is not disqualified from receiving unemployment insurance benefits. The claimant quit work to take other employment. He voluntarily quit without good cause attributable to the employer. Benefits are allowed because the claimant left to take other employment. The employer will not be charged.

DECISION:

The decision of the representative dated June 8, 2006, reference 03, is modified in favor of the appellant. The employer has filed a timely protest. The claimant voluntarily left work without good cause attributable to the employer. The claimant is not disqualified from receiving unemployment insurance benefits because he quit to take other employment. The employer will not be charged.

bas/cs