

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BRADLEY T TATE**  
Claimant

**HAWCOTT LAWN SERVICE**  
Employer

**APPEAL 15A-UI-03383-L-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/09/14  
Claimant: Respondent (4)**

Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment  
Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the March 11, 2015, (reference 02) unemployment insurance decision that allowed benefits based upon an untimely protest. The parties were properly notified about the hearing. A telephone hearing was held on April 22, 2015. Claimant participated. Employer participated through owner Benjamin Hawcott. The administrative law judge took official notice of the administrative record, including the Notice of Claim and protest. The parties waived fact-finding and notice of the separation issue governed by Iowa Code § 96.5(1)a.

**ISSUES:**

Is the employer's protest timely?  
Did claimant voluntarily quit the employment with good cause attributable to employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from employment with Hawcott Lawn Service on August 5, 2014, when he quit to take other employment with Ames Lawn Care. The Notice of Claim was mailed to the address of record but was delivered to the employer's home address and was inserted inside a junk mail catalog so the employer did not discover the notice until shortly before he filed a protest.

**REASONING AND CONCLUSIONS OF LAW:**

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.

The employer did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within a few days of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

Iowa Code § 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.

Even though the separation was without good cause attributable to the employer and would, standing alone, would disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

**DECISION:**

The March 11, 2015, (reference 02) unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest, and the claimant quit to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

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Dévon M. Lewis  
Administrative Law Judge

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Decision Dated and Mailed

dml/pjs