

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANDREA N KARNES**  
Claimant

**APPEAL NO. 11A-UI-01560-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MAINSTREAM LIVING INC**  
Employer

**OC: 10/10/10**  
**Claimant: Respondent (2R)**

Section 96.6-2 – Timeliness of Protest  
Section 96.5-1 – Voluntary Quit

**STATEMENT OF THE CASE:**

Mainstream Living Inc. filed an appeal from a representative's decision dated February 2, 2011, reference 02, which held claimant eligible to receive unemployment insurance benefits finding that the employer's protest regarding the claimant's separation from employment could not be accepted because it was not timely. After due notice was issued, a hearing was held by telephone on March 8, 2011. Although duly notified the claimant did not respond to the notice of hearing and did not participate. The employer participated by Ms. Marcanne Lynch, Human Resource Director. Employer's Exhibits One through Five were received into evidence.

**ISSUE:**

At issue in this matter is whether the employer filed a timely protest and whether the claimant left employment with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having considered all of the evidence in the record, finds that: Andrea Karnes was employed by Mainstream Living Inc. from January 6, 2009 until October 1, 2010 when she voluntarily left employment to move to a different geographic area. Ms. Karnes filed an unemployment insurance claim with an effective date of October 10, 2010.

On October 14, 2010 the employer was sent a notice that a claim had been filed. The notice was received by the employer and Ms. Marcanne Lynch responded by protesting the claim via facsimile on October 18, 2010. Ms. Lynch received a positive confirmation that the protest had been received by Iowa Workforce Development (see Exhibit Two and Three). Subsequently when the employer determined that they had been charged for Ms. Karnes unemployment claim, the employer invested and resubmitted its protest via letter postmarked January 31, 2011.

## 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 not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer protested within the time period prescribed by the Iowa Employment Security law and due to factors beyond the employer's control the protest was not entered as timely by the Agency. The administrative law judge concludes that the employer filed a timely protest pursuant to Iowa Code section 96.6.2.

Iowa Code section 96.5-1 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.

871 IAC 24.25(2) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

- (2) The claimant moved to a different locality.

Based upon the evidence in the record the administrative law judge concludes that the claimant, Andrea Karnes, voluntarily left employment for personal reasons that were not attributable to the

employer. The claimant has the burden of proving that voluntary leave was for good cause attributable to the employer. See Iowa Code section 96.6-2. While the claimant's decision to quit and move to another area was based upon good personal reasons it was not a good-cause reason attributable to the employer for leaving. Benefits but therefore be denied.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

**DECISION:**

The decision of the representative dated February 2, 2011, reference 02, is reversed. The employer filed a timely protest. The claimant voluntarily left her employment without good cause attributable to the employer. Benefits are withheld until such time as she has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, providing

that she is otherwise eligible. The issue of whether the claimant must repay unemployment insurance benefits is remanded to the UIS Division for determination.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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