

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DARRIN D MADDOX

Claimant

APPEAL NO: 09A-UI-14451-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 12/21/08

Claimant: Respondent (4)

Section 96.7-2-a – Employer Liability
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed a representative's September 15, 2009 decision (reference 01) that concluded the employer's account was subject to charge because the employer had not filed a timely protest. A telephone hearing was held on December 2, 2009. The claimant did not respond to the hearing notice or participate in the hearing. Dave Dalmasso, a human resource representative, appeared the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer file a timely protest or establish a legal excuse for fling a late protest?

Is the employer's account subject to charge?

FINDINGS OF FACT:

In another state, the claimant established a combined wage claim for benefits during the week of December 21, 2008. The Department mailed the employer a Notice of Wage Transfer form on January 5, 2009. The employer received the form on January 8 and faxed the completed form to the Department on January 9, 2009. (Employer Exhibit One.) The employer protested charges to its account.

The claimant started working for the employer on October 26, 2001. The claimant went on an approved vacation July 12 to 18, 2008. The claimant called on July 21 for a truck. The employer did not have a truck for him that day. The claimant was asked to call the employer back the next day after 10:00 a.m. The claimant did not call back for a truck. When the claimant had not called the employer again by July 30 and had been off from work for 15 days, the employer considered the claimant to have voluntarily quit his employment. The employer no longer considered the claimant an employee as of July 30. The claimant did not have any contact with the employer after July 21, 2008.

REASONING AND CONCLUSIONS OF LAW:

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 section 96.6-2. Another portion of Iowa Code section 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 Supreme 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 reasoning and holding of the *Beardslee* court is considered controlling on the portion of Iowa Code section 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts indicate the employer received the notice of wage transfer form on January 8, 2009, and faxed a completed protest to the Department on January 9, 2009. The employer had until January 15, 2009 to file and timely protest and did.

The next issue is whether the employer's account is subject to charge. An employer's account is relieved from charge when a claimant voluntarily quits employment without good attributable to the employer or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code section 96.7-2-a. The facts establish the claimant voluntarily quit his employment by abandoning it after July 21, 2008. The employer's account will not be charged.

The claimant's eligibility to receive benefit from another state is not affected by this decision.

DECISION:

The representative's September 15, 2009 decision (reference 01) is modified in the employer's favor. The employer filed a timely protest. The employer's account will not be charged for benefits paid to the claimant. This decision has no legal consequence on the benefits paid to the claimant from another state.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs