

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

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Appeal Number: 04A-UI-12003-SWT
OC: 10/03/04 R: 01
Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 26, 2004, reference 02, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on December 2, 2004. Proper notice of the hearing was given to the parties. Rosalind McCain participated on behalf of the employer with a witness, Brenda McNealey. Exhibit A-1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant signed a statement when he was hired stating that he was

required to contact the employer seeking work within three days following the completion of his work assignment or would be considered to have voluntarily quit employment.

The claimant worked for employer from May 10 to June 24, 2004. He worked on an assignment with Hawkeye Painting that was supposed to last a few weeks but ended up lasting one day on July 1, 2004, when the client business decided the job was too big for his company to handle. The claimant did not contact the employer within three business days following the completion of the work assignment on July 1, 2004. The employer called the claimant about other work, but the calls were not returned until August 5, 2004. At that point, the claimant said he was interested in the work but needed to think about the job and would get back to the employer. He never contacted the employer again.

The claimant filed a new claim for unemployment insurance benefits with an effective date of October 3, 2004. His weekly benefit amount was determined to be \$174.00. The claimant filed for and received a total of \$522.00 in unemployment insurance benefits for the weeks between October 3 and October 23, 2004.

A notice of claim was mailed to the employer on October 7, 2004, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of October 18, 2004. The employer's protest was mailed on October 18, 2004. The protest was not received until October 25, but was deposited with the United States Postal Service on October 18, 2004.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits.

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The employer's protest was filed by the deadline of October 18, 2004, and must be considered timely.

Iowa Code section 96.5-1-j provides that individuals employed by a temporary agency must contact their employer within three working days after the completion of a work assignment and seek a new assignment or they will be considered to have voluntarily quit employment without good cause attributable to the employer, provided that the employer has given them a statement to read and sign that advises them of these requirements.

The evidence establishes that the claimant failed to contact the employer within three working days after the completion of his last work assignment. He was advised of this requirement in writing when he was hired. He, therefore, must be considered to have voluntarily quit employment without good cause attributable to the employer.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$522.00 in benefits. The claimant can show that he has requalified by presenting evidence that he has been paid insured wages of ten times his weekly benefit amount of \$174.00 (\$1,740.00) since his employment with the employer ended on July 1, 2004.

DECISION:

The unemployment insurance decision dated October 26, 2004, reference 02, is reversed. The employer filed a timely protest. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

saw/tjc