

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JESUS ESCOBAR
Claimant

APPEAL NO. 11A-UI-06355-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

**OC: 04/17/11
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 10, 2011 (reference 03) decision that allowed benefits and found the protest untimely without having held a fact-finding interview pursuant to 871 IAC 24.9(2)b. After due notice was issued, a hearing was scheduled to be held by telephone conference call on June 10, 2011. Claimant did not respond to the hearing notice instructions. Employer responded to the hearing notice instructions but no hearing was held as there was sufficient evidence in the appeal letter and accompanying documents to resolve the matter without testimony.

ISSUES:

The issues are whether employer's protest is timely and if claimant quit to take other employment.

FINDINGS OF FACT:

Having reviewed the evidence in the record and the employer's appeal letter and supporting documentation, the administrative law judge finds: A notice of claim for Yaminette Rosario with the same Social Security number as the employer's employee Jesus Escobar, was mailed to the employer on April 18, 2011. The employer responded on April 20, 2011 that the name was incorrect but named Escobar as their employee who had left the employment on September 18, 2010 to take employment with West Liberty Foods. The agency sent a notice of claim sent in error letter to the employer on April 22, 2011 and purportedly mailed a new notice of claim to the employer for Escobar April 20, 2011 but it was not received until May 3, 2011, the, a day after the protest deadline. The employer filed a protest on May 3, 2011 explaining the situation but the untimely protest decision was sent in spite of that without having a fact-finding interview or investigating further.

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 administrative law judge concludes that the employer filed its protest within the time period prescribed by the Iowa Employment Security Law because the notice was received a day after the protest deadline. Furthermore, the employer had already provided adequate response to the previous notice of claim for the correct Social Security number but an incorrect name provided by IWD. This is sufficient evidence of intent to protest any potential charges to their account.

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, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The May 10, 2011 (reference 03) 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.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css