

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICHOLAS A SMITH
Claimant

APPEAL NO. 10A-UI-00703-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

EASTERN IOWA DRAINAGE SERVICES INC
Employer

OC: 11/29/09
Claimant: Respondent (4)

Section 96.6-2 – Timeliness of Protest
Section 96.5-1-a – Voluntary Quit to Accept Other Employment

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated January 5, 2010, reference 01, that concluded the employer's protest was not timely. A telephone hearing was held on February 3, 2010. The claimant participated in the hearing. Jody Yutesler participated on behalf of the employer. Exhibits A-1 and A-2 were admitted into evidence at the hearing.

ISSUES:

Did the employer file a timely protest of the claim?

Did the claimant voluntarily quit employment without good cause?

FINDINGS OF FACT:

The claimant worked for the employer for three days at the end of February 2009. He voluntarily left employment at the end of February 2009 to return to work with his regular employer, Pospisil Painting Inc. The claimant performed services for Pospisil Painting Inc. until he was laid off in December 2009.

A notice of claim was mailed to the employer's address of record on December 15, 2009, 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 December 28, 2009. The employer's protest was faxed on December 29, 2009, because the owner tried faxing several times on December 28 but the Agency's fax line was busy or would not accept faxes.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits. The protest is deemed timely because the failure to file a timely protest was due to an Agency error, which under 871 IAC 24.35(2) would excuse the delay in filing the protest.

The next issue in this case is whether the claimant voluntarily quit employment without good cause.

Iowa Code section 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.

The claimant left work to accept other employment and performed services in that new employment. The claimant is qualified to receive unemployment insurance benefits based on his separation from employment with the employer. Pursuant to the statute, the employer's account will not be charged for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated January 5, 2010, reference 01, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits, provided he is otherwise eligible. The employer's account will be exempt from charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css