

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**SEBASTIAN C RODRIGUEZ**  
Claimant

**APPEAL NO. 08A-UI-02548-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 12/02/07 R: 02**  
**Claimant: Respondent (4)**

Section 96.6-2 – Timeliness of Protest  
Section 96.5-1 – Voluntary Leaving/Requalification

**STATEMENT OF THE CASE:**

Tyson Fresh Meats, Inc. (employer) appealed a representative's March 6, 2008 decision (reference 03) that concluded Sebastian C. Rodriguez (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on March 31, 2008. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Heather Woodward of TALX Employer Services appeared on the employer's behalf. During the hearing, Employer's Exhibit One was entered into 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:**

Should the employer's protest be treated as timely? Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective December 2, 2007. A notice of claim was mailed to the employer's last-known address of record on December 10, 2007. The employer's representative received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by December 20, 2007. The protest was not treated filed until the employer's representative contested the fourth quarter statement of charges on February 29, 2009, which is after the date noticed on the notice of claim.

Ms. Woodward was the employer's representative who received and handled the notice of claim. She drafted and printed a letter dated December 12, 2007 protesting the claimant's claim on the basis that he had voluntarily quit for personal reasons as of July 24, 2007. Ms. Woodward then placed the letter, addressed to the Agency, into the depository for delivery

to the United States Postal Service. The Agency does not have record of receiving the December 12 letter until a copy was provided for purposes of this proceeding.

The claimant started working for the employer on July 18, 2006. His last day of work was July 24, 2007. When he established his claim for unemployment insurance benefits, his weekly benefit amount was determined to be \$322.00. Agency records show that after the claimant's separation from this employer, he earned insured wages from another employer exceeding \$3,220.00.

#### **REASONING AND CONCLUSIONS OF LAW:**

The preliminary issue in this matter is whether the employer filed a timely protest. 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 administrative law judge considers the reasoning and holding of the Beardslee court 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. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes the employer's representative placed a completed protest into the custody of the United States Postal Service on December 12, 2007, within the time for filing a timely protest. The administrative law judge concludes that failure to have the protest postmarked within the time prescribed by the Iowa Employment Security Law was due to error, delay or other action of the Agency or the United States Postal Service pursuant to 871 IAC 24.35(2). The employer was not responsible for the delay in the Agency's receiving the notice of claim, but the delay was due to department error or misinformation or delay or other action of the United States Postal Service. The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code section 96.6-2.

The substantive issue in this case is whether the claimant's July 24, 2007 separation disqualifies him from benefits and whether the employer's account is subject to charge. The wages the claimant earned with the employer are in his base period. The employer asserted the claimant voluntarily quit as of July 24, 2007. However, this issue does not need to be resolved because after the claimant worked for the employer but before he filed his claim for benefits December 20, 2007, he earned more than \$3,220.00 in wages from another employer. As a result, the reasons for his separation in July 2007 do not affect the claimant's eligibility to receive unemployment insurance benefits. 871 IAC 24.28(1). This also means the employer's account will not be charged for any benefits the claimant receives.

**DECISION:**

The representative's March 6, 2008 decision (reference 03) is modified in favor of the appellant. The employer's protest was timely. The claimant is requalified to receive unemployment insurance benefits after his July 24, 2007 separation. Since the claimant has requalified to receive unemployment insurance benefits, the employer's account shall not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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