

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JESSE G SLOAT**  
Claimant

**APPEAL NO. 10A-UI-02577-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES - MARSHALLTOWN**  
Employer

**Original Claim: 12/20/09  
Claimant: Respondent (4-R)**

Section 96.6-2 – Timeliness of Protest  
871 IAC 24.8(2),(3) – Employer Supplemental Protest  
Section 96.5-1 – Voluntary Quit  
871 IAC 24.25(4) – Job Abandonment  
Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated February 15, 2010, reference 03, that held it failed to file a timely protest from the claimant's separation from employment on December 23, 2009, and that allowed benefits. A hearing was held on April 7, 2010. The claimant did not participate. Nancy Mullaney, Grinnell Manager, participated for the employer. Employer Exhibits 1 and 2 were received as evidence.

**ISSUES:**

Whether the protest is timely.

Whether the claimant voluntarily quit without good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony of the witness and having considered the evidence in the record, finds that: The claimant worked on assignment at Montezuma Manufacturing up to December 23, 2009. The claimant and other workers on his line were laid off due to a plant shutdown with the instruction to report back to work on January 19, 2010. The claimant failed to return to work on January 19 or thereafter, and the employer considered him to have voluntarily quit employment after failing to report for three days.

The claimant filed an unemployment claim effective December 20, 2009. The employer received the notice of claim. The employer returned the notice without a protest, because of the plant shutdown layoff. However, when the claimant failed to return to work at the end of the shutdown on January 19, and for three days thereafter, it mailed a separation from employment notice on a department form to the department on January 22, 2010 that indicated the claimant had voluntarily quit employment.

## REASONING AND CONCLUSIONS OF LAW:

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that 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 that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer did not protest the claimant's claim as to his layoff for the period from December 23, 2009 to his return to work date of January 19, 2010. The claimant is entitled to benefits for the three weeks ending January 16, 2010, provided he is otherwise eligible.

The administrative law judge further concludes the employer timely protested the claimant's separation from employment on January 22, 2010 by submitting a department form on that date that which indicated the claimant had voluntarily quit employment.

Iowa Code section 96.5-1 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.

871 IAC 24.25(4) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(4) The claimant was absent for three days without giving notice to employer in violation of company rule.

The administrative law judge further concludes the claimant voluntarily quit employment without good cause attributable to the employer effective January 19, 2010, when he failed to return to work after a layoff that is job abandonment.

The claimant and other line workers were instructed to report back to work at the end of the plant shutdown on January 19, but the claimant failed to return to work and report for a period of three days, which is job abandonment.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

This issue of overpayment is remanded to claims for a determination.

**DECISION:**

The decision of the representative dated February 15, 2010, reference 03, is modified. The claimant is entitled to benefits for the three weeks ending January 16, 2010 due to a layoff based on a plant shutdown, provided he is otherwise eligible. The employer filed a timely protest regarding the claimant's employment separation on January 19, 2010. The claimant voluntarily quit without good cause on January 19, 2010. Benefits are denied until the claimant re-qualifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

rls/kjw