

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUANNE E ZUELK

Claimant

APPEAL NO: 09A-UI-08678-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA

Employer

OC: 11/30/08

Claimant: Respondent (5)

Section 96.5-2-a – Discharge
Section 96.6-2 – Timeliness of Protest
871 IAC 23.43(9) – Combined Wage Claim

STATEMENT OF THE CASE:

Heartland Express, Inc. of Iowa (employer)) appealed a representative's June 12, 2009 decision (reference 01) that concluded that concluded its account would not be relieved of charges in conjunction with a combined wage claim regarding Luanne E. Zuehlk (claimant) because the employer's response was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 6, 2009. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Dave Dalmasso appeared on the employer's behalf. During the hearing, Exhibit A-1 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:

Was the employer's response to the notice of wage transfer timely? Was there a separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct such that the employer's Iowa account should be relieved of charges for benefits which might be paid to the claimant by another state?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective November 11, 2008. A notice of wage transfer to the state of Michigan was mailed to the employer's last-known address of record on December 23, 2008. The employer received the notice. The notice contained a warning that a response must be postmarked or received by the Agency within ten days, extended due to the holidays to January 2, 2009. The response was not noted as filed until the employer further protested a May 8, 2009 quarterly statement of charges, which was after the date noticed on the notice of wage transfer. The employer's human resources representative, Mr. Dalmasso, had personally completed the response form on December 29, 2008 and had personally observed the protest be successfully processed through the employer's fax machine for transmission to the Agency Claims Section without any error.

The claimant started working for the employer on October 31, 2007. She worked full time as an over-the-road truck driver. Her last day of actual work was February 26, 2008. She was driving on a snow and ice covered highway in Ohio on that date when she lost control due to a patch of ice and went into a field. No citations were issued. She was towed to the pavement and was able to drive the vehicle from the scene, but there was about \$9,500.00 damage to the cab. There had not been any prior incidents. Due to this incident, the claimant was discharged.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the employer's protest can be treated as timely. 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 to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 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 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 § 96.6-2 which deals with the time limit to file a protest after the notice of wage transfer 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 properly transmitted a completed protest into the within the time for filing a timely protest. The administrative law judge concludes that failure to have the protest received and noted as received within the time prescribed by the Iowa Employment Security Law was due to error, delay or other action of the Agency pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the protest and appeal.

A "combined wage claim" is a claim by filed by the state in which the claimant has a primary unemployment insurance claim against another state in which the claimant has base-period wages under the interstate wage combining plan which allows workers who lack qualifying wages in any one state, or who qualify for less than maximum benefits in one or more states, to qualify or to increase benefits by combining wages from all states. 871 IAC 24.1(25)b(5); 871 IAC 24.1(64)c. On a combined wage claim, an Iowa employer would only be relieved of charges if the facts would support a relief of charges under Iowa law. 871 IAC 23.43(9). Iowa Code § 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

Iowa Code § 96.5-2-1 disqualifies an individual if the individual was discharged for work-connected misconduct. Misconduct connotes volition. A failure in job performance is not misconduct unless it is intentional. Huntoon, supra. There is no evidence the claimant intentionally caused the accident which lead to her discharge. As was not discharged for work-connected misconduct, she would not have been disqualified for unemployment insurance benefits on an Iowa claim, therefore the employer's account is not exempt from charge on the combined wage claim.

DECISION:

The representative's June 12, 2009 decision (reference 01) is affirmed as modified with no effect on the parties. The protest in this case was timely. The employer is not relieved of charges for benefits paid to the claimant as the employer would be liable for charges had the claimant filed an Iowa claim.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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