

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MOLLY J MATLAGE
Claimant

APPEAL NO: 13A-UI-11144-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

THE BIG STEER RESTAURANT & LOUNGE
Employer

OC: 08/25/13
Claimant: Respondent (4)

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

STATEMENT OF THE CASE:

The Big Steer Restaurant & Lounge (employer) appealed a representative's September 25, 2013 decision (reference 03) that concluded Molly J. Matlage (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 October 24, 2013. 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. Randy Fix 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:

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 August 25, 2013. A notice of claim was mailed to the employer's last-known address of record on August 27, 2013. The employer received the notice, but not until about September 20, 2013. The employer has had repeated problems getting mail properly delivered to its address. The notice contained a warning that a protest must be postmarked or received by the Agency by September 6, 2013. The protest was not filed until it was faxed on September 23, 2013, which is after the date noticed on the notice of claim.

The claimant's last day of work was August 10, 2012; the employer asserted that she voluntarily quit as of that date. When she established her claim for unemployment insurance benefits, her weekly benefit amount was determined to be \$408.00. Agency records show that after the claimant's separation from this employer, she earned insured wages from another employer exceeding \$4,080.00.

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 § 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 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 § 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 that the employer's representative did not receive the notice of claim until about September 20, 2013. The employer was not responsible for the delay in receiving the notice of claim, but the delay was due to error, misinformation, delay or other action of the United States Postal Service. The employer did file its protest within ten days of actually receiving the notice. The administrative law judge, therefore, concludes that the protest is deemed timely filed pursuant to Iowa Code § 96.6-2.

Iowa Code section 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

After the claimant worked for the employer but before she filed her claim for benefits effective August 25, 2013, she earned more than \$4,080.00 in wages from another employer. As a result, the reasons for her separation from the employer in August 2012 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. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The representative's September 25, 2013 decision (reference 03) is modified in favor of the appellant. The employer's protest is treated as timely. The claimant voluntarily left her employment with the employer, but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs