

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

CLINTON J SOTOMAYOR
Claimant

APPEAL NO. 07A-UI-11367-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TEMP ASSOCIATES
Employer

**OC: 11/04/07 R: 03
Claimant: Respondent (4)**

Section 96.6-2 – Timely Protest

STATEMENT OF THE CASE:

Temp Associates (employer) appealed a representative's December 7, 2007 decision (reference 04) that concluded Clinton J. Sotomayor (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 27, 2007. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Mike Thomas appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as 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:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The employer is a temporary employment firm. The claimant applied to work for the employer's clients. When the claimant applied, he received information that when an assignment had been completed, he was required to contact the employer within three working days for another job assignment. If the claimant did not contact the employer, his future unemployment insurance benefits could be jeopardized. The claimant received a copy of this policy.

The employer assigned the claimant to a job on January 24, 2007. The claimant completed this job assignment on April 2, 2007. The employer learned the job assignment had been completed from the client about a week or so later. The claimant did not contact the employer again for another job assignment.

After working for the employer but before he established a claim for unemployment insurance benefits during the week of November 4, 2007, the claimant worked for another employer and earned more than ten times his weekly benefit amount or more than \$2,390.00 in wages.

On November 7, 2007, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The Notice of Claim indicated the employer had until November 19, 2007, to respond to the notice.

The employer received the Notice of Claim on November 9, 2007. The employer immediately completed the form and faxed it to the Department on November 9, 2007. (Employer Exhibit One.)

When the employer did not receive any information about its protest, the employer faxed the completed protest again on December 5, 2007. When the employer faxed in the second protest, the employer indicated an earlier protest had been faxed on November 9, 2007.

REASONING AND CONCLUSIONS OF LAW:

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 reasoning and holding of the Beardslee court is considered 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. The facts indicate the employer received the Notice of Claim on November 9 and faxed the completed protest the same day. The employer filed a timely protest. Therefore, there is legal jurisdiction to relieve the employer's account from charge. See Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The next issue is whether the employer's account is subject to charge. An employer's account is relieved from charge when a claimant voluntarily quits employment without good attributable to the employer or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code § 96.7-2-a. Under Iowa Code § 96.5-1-j a claimant voluntarily quits employment when the claimant does not seek another job assignment within three days from a temporary employment firm. The facts establish the claimant voluntarily quit his employment without good cause attributable to the employer. The employer's account will not be charged.

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's December 7, 2007 decision (reference 04) is modified in the employer's favor. The employer filed a timely protest. Since the claimant requalified before he established his claim for unemployment insurance benefits, he remains qualified to receive unemployment insurance benefits. The employer's account, however, will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css