

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID L GUYMON JR
Claimant

APPEAL NO: 07A-UI-05483-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SOUTHEASTERN IOWA PORT TERMINAL
Employer

**OC: 12/24/06 R: 04
Claimant: Respondent (4)**

Section 96.6-2 – Timeliness of Protest
Section 96.7-2-a – Employer Liability

STATEMENT OF THE CASE:

Southeastern Iowa Port Terminal LLC (employer) appealed a representative's May 24, 2007 decision (reference 01) that concluded David L. Guymon, Jr. (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 13, 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. Kay Klepfer, the secretary, 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?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of December 24, 2006. On April 16, 2007, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and informed the employer about the maximum amount of money that could be charged to the employer's account. The notice also informed the employer they had until April 26, 2007 to respond to the notice.

The employer received the notice of claim on April 21, 2007. Since the employer acquired the assets of Iowa Gateway Terminal on September 1, 2006, the employer contacted the person closing out Iowa Gateway Terminal's books to find out about the claimant's employment. Initially, the employer was told that the claimant never worked for the Iowa Gateway Terminal.

The employer protested any charges against its account based on the fact the claimant had not previously worked for the employer or Iowa Gateway Terminal. The Department received the employer's protest on April 23, 2007.

On May 11, 2007, the Department informed the employer that wages had been reported for the claimant and that as a successor, the employer was potentially liable for charges. As a result of the May 11 letter, the employer again contacted the employee closing the books for Iowa Gateway Terminal. The employer then received information that the claimant's social security number had not been recorded correctly and he had worked for Iowa Gateway Terminal as an employee. The claimant's last day of work was February 8, 2006. The employer was told the claimant voluntarily quit and it was presumed he quit for another job. The employer faxed another letter on May 22 indicating the claimant had voluntarily quit his employment with Iowa Gateway Terminal on February 8, 2006. (Employer Exhibit One).

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 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 reasoning and holding of the Beardslee court is considered 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. The facts indicate the employer protested the notice of claim within the ten-day deadline or on April 23, 2007. Although the reasons the employer protested were not accurate, the employer had to rely on information provided by the previous employer. Since the employer took reasonable steps to find out if the claimant had worked for Iowa Gateway Terminal and why he left, the employer should not be penalized because the business that was closing gave the employer inaccurate information. The fact remains the employer made a timely protest based on inaccurate information. Under these facts, the employer filed a timely protest on April 23, 2007. Therefore, there is legal jurisdiction to relieve the employer's account from charge.

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 cause attributable to the employer or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code section 96.7-2-a. The facts establish the claimant voluntarily quit his employment. The claimant may have quit working for another employer, but this is not a known fact. The evidence indicates the claimant voluntarily quit his employment for reasons that would not qualify him to receive unemployment insurance benefits.

After the claimant worked for the employer and 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 May 24, 2007 decision (reference 01) is modified in the employer's favor. First, 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/pjs