

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

RONALD R MILLARD
Claimant

APPEAL NO: 10A-UI-04676-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDLAND FORGE
Employer

OC: 12/20/09
Claimant: Respondent (5)

Section 96.5-1 - Discharge

STATEMENT OF THE CASE:

The employer appealed a representative's March 16, 2010 decision (reference 01) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer had not filed a timely protest. A telephone hearing was held on May 5, 2010. The claimant participated in the hearing with his witness, Bonnie Millard. Deborah Dittmar, the corporation's human resource manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, 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?

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits, or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on August 6, 1979. He worked as a full-time district sales manager. The claimant worked out of the employer's corporate office in Amherst, New York.

In attempt to downsize, the employer offered employees who were 57-years-old and had 15 years of employment with the employer an early retirement package. The claimant's supervisor, who had worked 40 years for the employer, told the claimant this early retirement package was going to be offered to both of them. The claimant's supervisor also revealed that both of their positions were going to be eliminated. If the claimant did not accept the early retirement package he did not know if he would have a job with the employer. When the package was offered to him, the instructions advised him not to talk about the plan with anyone except a corporate lawyer. Under duress the claimant accepted the employer's early retirement plan/or severance package. The claimant's last day of work was in late May 2009. He received payments from the employer until December 23, 2009.

After the claimant accepted the early retirement plan, the employer had to lay off more employees. The employer did not replace the claimant's job with anyone.

The claimant established a claim for benefits during the week of December 20, 2009. When he filed, the claimant listed the employer's address as Amherst, New York. The employer had a manufacturing plant in Cedar Rapids. On December 30, 2009, the Department mailed a notice of claim to the employer at the Cedar Rapids' address, which was the manufacturing plant. A human resource manager for this facility signed the notice of claim on January 5, 2010. The employer does not know what the human resource manager did with the notice of claim she signed. Since the Cedar Rapids manufacturing plant closed, a plant in Tennessee received a bundle of mail from Iowa. Ultimately, Dittmar learned about the notice of claim and protested the claimant's receipt of benefits on March 8, 2010.

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 Department failed to mail the notice of claim to the correct address even though the claimant provided the Amherst, New York address. It is troublesome that a human resource manager signed the notice of claim on January 5, 2010, and the employer did not research or take time to prepare for the hearing to explain what happened after the notice of claim was signed on January 5, 2010. Ultimately, since the Department failed to mail the notice of claim to the correct mailing address, the employer established a legal excuse for filing a late appeal on March 8, 2010.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code § 96.5-1, 2-a. The evidence establishes the claimant was given the opportunity to take early retirement with some guaranteed benefits or be laid off from work. The claimant's reliance on his supervisor's representation about his continued employment was reasonable. The claimant's testimony is supported by the fact the employer did not replace anyone in his position. A preponderance of the evidence establishes the employer eliminated the claimant and as the result of a separation agreement the claimant received a severance package. Since the claimant did not file a claim for benefits until he exhausted all payments from the employer, he is qualified to receive benefits as of December 20, 2009.

DECISION:

The representative's March 16, 2010 decision (reference 01) is modified, but the modification has no legal consequence. The employer did not file a timely protest, but established a legal excuse for filing a late protest. The employer effectively laid off the claimant as the result of downsizing, and gave the claimant a severance package. The claimant's employment

separation was for nondisqualifying reasons. As of December 20, 2009, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css