

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

PATTY S HUEBNER
Claimant

APPEAL NO. 11A-EUCU-00066-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

VINNIE'S SANTA FE AVE TAP LTD
Employer

OC: 05/23/10
Claimant: Respondent (4)

Section 96.5-1 - Voluntary Quit
Section 96.7-2-a(6) – Appeal from Quarterly Statement of Benefit Charges

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 23, 2010, reference 01, that concluded its protest was untimely. A telephone hearing was held on February 23, 2011. The parties were properly notified about the hearing. The claimant participated in the hearing. Debra Vincent participated in the hearing on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUES:

Did the employer file a timely protest or appeal from a quarterly statement of benefits charges?
Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked part time for the employer as a bartender from 1998 to September 5, 2009. This was to supplement her full-time job. In September 2009, the claimant had also started a master's program. On about September 5, 2009, she informed the co-owner, Debra Vincent, that she was overwhelmed by working two jobs and attending school and was quitting.

The claimant filed a new claim for unemployment insurance benefits with an effective date of May 23, 2010.

A notice of claim was mailed to the employer's address of record on June 2, 2010. The notice was never received by the employer and, therefore, no protest of the claim was filed within 10 days as specified on the notice of claim. The co-owner received a quarterly statement of benefits charges dated November 9, 2010. She wrote to the agency on December 8, 2010, indicating the employer was appealing the quarterly statement of benefit charges.

An unemployment insurance decision was issued on December 23, 2010, that concluded the employer's protest of the claim could not be accepted because it had not been filed timely. The employer appealed that decision by fax on January 3, 2011.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether the employer is entitled to contest the eligibility of the claimant to receive unemployment insurance benefits.

Iowa Code § 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

Iowa Code § 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

The preponderance of the evidence establishes that the employer was not notified about the claim filed by the claimant or the allowance of benefits to the claimant until it received the Statement of Charges dated November 9, 2010. Since the employer was not notified about the allowance of benefits to the claimant and timely appealed the Statement of Charges, the employer is entitled to protest charges to its account.

The next issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code § 96.5-1 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.

871 IAC 24.27 provides:

Voluntary quit of part-time employment and requalification. An individual who voluntarily quits without good cause part-time employment and has not requalified for benefits following the voluntary quit of part-time employment, yet is otherwise monetarily eligible for benefits based on wages paid by the regular or other base period employers, shall not be disqualified for voluntarily quitting the part-time employment. The individual and the part-time employer which was voluntarily quit shall be notified on the Form 65-5323 or 60-0186, Unemployment Insurance Decision, that benefit payments shall not be

made which are based on the wages paid by the part-time employer and benefit charges shall not be assessed against the part-time employer's account; however, once the individual has met the requalification requirements following the voluntary quit without good cause of the part-time employer, the wages paid in the part-time employment shall be available for benefit payment purposes. For benefit charging purposes and as determined by the applicable requalification requirements, the wages paid by the part-time employer shall be transferred to the balancing account.

The claimant voluntarily quit employment without good cause attributable to the employer. The job, however, was part time, and the claimant has sufficient wages from other employers to qualify to receive unemployment insurance benefits. Pursuant to the rule, the employer's account will not be subject to charge for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated December 23, 2010, reference 01, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits, if she is otherwise eligible. The employer's account will not be subject to charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs