

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BOBBI J PRESTON
Claimant

APPEAL NO. 07A-UI-06732-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FAMILY AFFAIR LLC
Employer

**OC: 06/10/07 R: 02
Claimant: Respondent (4)**

Section 96.5-1-a – Voluntary Quit to Accept Other Employment
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated June 10, 2007, reference 03, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on July 26, 2007. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Edward Paulin participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

ISSUE:

Did the employer file a timely protest of the claim?

Did the claimant voluntarily quit employment to accept other employment?

FINDINGS OF FACT:

The claimant worked part time as a waitress and cook for the employer from August 2005 to December 7, 2006. She left employment to accept another job that provided her with more flexible hours to fit her school schedule.

A notice of claim was mailed to the employer on June 14, 2007. The notice of claim was sent to 28456 County Hwy S62, Union IA 50258, which is not the employer's correct mailing address, rather than to the correct mailing address of 28457 County Hwy S62, Gifford IA 50259. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of June 25, 2007. The notice of claim was received late because it was not sent to the correct mailing address. The employer's protest was faxed on June 26, 2007, which was after the time period for protesting had expired.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

Iowa Code section 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code Section 96.6-2. However, the failure to file a timely protest was due to an Agency error in sending the notice of claim to the wrong address, which under 871 IAC 24.35(2) excuses the delay in filing the protest. The protest is deemed timely.

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

Iowa Code section 96.5-1-a 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:
 - a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant left work to accept other employment and performed services in that new employment. The claimant is qualified to receive unemployment insurance benefits based on her separation from employment with the employer, provided she is otherwise eligible. Pursuant to the statute, the employer's account will not be charged for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated June 10, 2007, reference 03, is modified in favor of the employer. The employer filed a timely protest. The claimant is qualified to receive unemployment insurance benefits, provided she is otherwise eligible. The employer's account will be exempt from charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw