

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JASON C HINES  
16505 – 290<sup>TH</sup> ST  
CONRAD IA 50621

JOHN HANZELKA TRUCK SERVICE INC  
c/o JEREMY SUNEAU  
PO BOX 693  
CONRAD IA 50621 0693

Appeal Number: 05A-UI-07922-DWT  
OC: 06/26/05 R: 02  
Claimant: Respondent (4/R)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

John Hanzelka Truck Services, Inc. (employer) appealed a representative's July 29, 2005 decision (reference 02) that concluded Jason C. Hines (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 August 18, 2005. 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. Jeremy Suneau, the new owner, 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?

Is the employer's account relieved from charge?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of June 26, 2005. On June 28, 2005, the Department mailed a notice to the previous 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 July 8, 2005, to respond to the notice.

Suneau, the new owner of the business, learned from John Hanzelka, the previous owner, about the notice of claim on July 8, 2005. Hanzelka's unemployment insurance account was transferred or assumed by Suneau when Suneau took over the business in January 2005. Suneau immediately completed the form and faxed the completed form to the Department from the local newspaper's office on July 8, 2005. The Department did not notice the faxed protest until July 11, 2005.

The claimant worked for the previous employer until August 2004. The claimant quit because he accepted another job that paid him more money. Between August 2004 and June 26, 2005, the claimant worked for other employers and earned more than ten times his weekly benefit amount.

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 "current employer did not receive the notice of claim until July 8 or the last day of the initial ten-day deadline. The facts establish the employer filed a timely appeal on by faxing the protest on July 8, 2005. Even if the Department did not receive the fax until July 11, the employer filed the protest on July 8, 2005. Since the employer filed a timely protest, the Appeals Section has 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. Also, under Iowa Code §96.5-1-a an employer's account is relieved from charge when a claimant quits for other employment. The facts establish the claimant voluntarily quit his employment to work for another employer. Therefore 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.

During the hearing, the employer raised an issue of whether the claimant refused an offer of suitable work with this employer sometime after June 26, 2005. Since this was not an issue that either party appealed, this issue is remanded to the Claims Section to investigate.

**DECISION:**

The representative's July 29, 2005 decision (reference 02) 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. An issue of whether the claimant refused the employer's offer of work after June 26, 2005, is remanded to the Claims Section to investigate.

dlw/tjc