

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MARIA C STRUTHERS
Claimant

APPEAL NO: 12A-UI-02174-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HORIZONS UNLIMITED OF PALO ALTO
Employer

OC: 02/29/12
Claimant: Respondent (4)

Iowa Code § 96.5(1)a – Employer Liability
Iowa Code § 96.6(2) – Timeliness of Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's February 29, 2012 determination (reference 02) 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. The claimant participated in the hearing. Pam Beschorner appeared on the employers' behalf. Based on the administrative record and the law, the administrative law judge concludes the employer's account is not subject to charge and the claimant remains qualified to receive benefits.

ISSUES:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

Is the employer's account subject to charge for benefits paid to the claimant?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of June 10, 2011. On July 13, 2011, the Department mailed a notice to the 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 25, 2011, to respond to the notice.

The employer received the notice of claim on or before July 20, 2011. The employer faxed the completed protest to the Department on July 20, 2011. The employer's business records verify the fax was successfully transmitted to the Department. The employer was not asked to participate in a fact-finding interview and did not know its account had been held subject to charge until the employer received a statement of charges on February 10, 2012.

The employer contacted the Department and protested the charges against its account. The employer received information the Department did not have a record of receiving the employer's protest. A Department representative asked the employer to fax a copy of the protest the employer had faxed on July 20, 2011. The employer faxed this information again on February 28, 2012.

On June 24, 2010, the claimant gave the employer a two-week notice because she had accepted another job. The claimant's last day of work for the employer was July 8, 2010. Between July 8,

2010, and July 10, 2011, the claimant worked for another employer and earned more than \$3,270, or more than ten times her 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) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts establish the employer filed a timely protest on July 20, 2011. Since the fax was successfully transmitted, the employer has no control about what happens to a fax after it has been transmitted to the Department. Since the employer filed a timely protest, 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 § 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 her employment in July 2010 to work for another employer. The employer's account is not subject to charge.

Even if the claimant had not quit for other employment, she would be qualified to receive benefits as of July 10, 2011, based on this employment because she earned more than ten times her weekly benefit amount from subsequent employment. There is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's February 29, 2012 determination (reference 02) is modified in the employer's favor. The employer filed a timely protest. The employer's account is not subject to any charges based on benefits the claimant receives during her current benefit year. The claimant remains eligible to receive benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw