IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS

MELISSA A HARMS
Claimant

APPEAL NO: 12A-UI-10857-ST

ADMINISTRATIVE LAW JUDGE DECISION

SKYLINE CENTER INC
Employer

OC: 07/22/12
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest
Section 96.5-2a – Discharge
Section 96.5-1 – Voluntary Quit

STATEMENT OF THE CASE:

The employer appealed a department decision dated August 13, 2012, reference 03, that held it failed to file an adequate protest regarding claimant's employment separation on March 31, 2012, and no relief of charges is granted for benefits paid to claimant on an Iowa claim. A telephone hearing was scheduled for October 2, 2012. The claimant and employer did not participate. Official Notice was taken of the employer appeal documents.

ISSUE:

Whether the employer filed an adequate protest to claimant's Iowa unemployment claim in order to be granted a relief of charges.

FINDINGS OF FACT:

The administrative law judge having considered the evidence in the record, finds: The claimant filed a combined wage claim effective July 22, 2012. The department interstate claims unit mailed a notice to the employer on July 27 to transfer claimant wages to Illinois. The employer was given the opportunity to provide information to justify a relief of benefit charges by filing that protest within ten days.

The employer protested the claim by stating it had no record of claimant working for it. The department record shows the employer reported paying taxable wages for the claimant in the amount of $3,274 .00for the fourth quarter of 2011, and $4,556.00 for the first quarter of 2012. The claimant's (Melissa Harms nee Schulteis) social security number does identify her as employee on the employer record.

The claimant and employer did not respond to the hearing notice.

REASONING AND CONCLUSIONS OF LAW:

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer failed to file an adequate/timely protest to claimant's March 31, 2012 employment separation, and no relief of charges is granted.

The employer failed to identify claimant by her social security number as an employee that caused it to erroneously protest she was not an employee. The protest period is limited to ten days and the employer is not entitled to now submit a second protest beyond the ten-day period required by law.

DECISION:

The department decision dated August 13, 2012, reference 03, is affirmed. The employer failed to file a timely/adequate protest to claimant's employment separation, and no relief of charges is granted.

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Randy L. Stephenson
Administrative Law Judge

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Decision Dated and Mailed

rls/css