

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**KRISTIN L FULTZ**  
Claimant

**APPEAL NO. 09A-UI-08018-NT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TEMP ASSOCIATES**  
Employer

**OC: 04/05/09**  
**Claimant: Respondent (2)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from a representative's decision dated May 28, 2009, reference 01, which held the decision on the claimant's separation from employment on August 7, 2008 had been made on a prior claim and that decision remained in effect. After due notice, a telephone conference hearing was scheduled for and held on June 18, 2009. Although duly notified, claimant was not at the telephone number provided. The employer participated by Mr. Mike Thomas, Account Manager.

**ISSUE:**

At issue is whether the employer filed a protest on claimant's separation from employment that took place on August 7, 2008.

**FINDINGS OF FACT:**

The administrative law judge, having heard the testimony considered the evidence in the record finds: Kristin Fultz was employed through Temporary Associates on a long-term assignment at Harper Brush, beginning on August 6, 2008. The claimant quit employment the following day. The employer did not file a protest regarding the claimant's separation from employment on the August 7, 2008 date. The employer protested a separation from employment that took place on August 15, 2008. A representative's decision was issued on that separation. The employer filed an appeal and a hearing was held by an administrative law judge on October 30, 2008. The employer's branch manager, Janet Joyce, participated in that telephone hearing. A decision was issued by an administrative law judge on October 31, 2008 confirming the fact-finder's decision.

It is the employer's position in this appeal that the claimant's separation from employment on August 7, 2008 had not been adjudicated previously. The administrative law judge, having taken official notice of the administrative file, notes that no protest had been filed by the employer regarding the claimant's earlier separation from employment on her prior claim.

## REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6-2 provides:

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 representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

As the employer has not filed a protest regarding the claimant's separation from employment on the prior claim. The employer has failed to protest pursuant to Iowa Code section 96.62 and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See Beardsley v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Co. v. Employment Appeal Board, 465 N.W.2d 674 (Iowa Ct. App. 1990).

**DECISION:**

The representative's decision dated May 28, 2009, reference 01, is affirmed. The employer did not file a protest. The decision of the representative shall stand and remain in effect.

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Terence P. Nice  
Administrative Law Judge

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Decision Dated and Mailed

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