

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TYLER M MURRAY
Claimant

APPEAL NO: 12A-UI-00737-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HY-VEE INC
Employer

OC: 12/18/11

Claimant: Respondent (2)

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

STATEMENT OF THE CASE:

Hy-Vee (employer) appealed a representative's January 11, 2012 decision (reference 03) that concluded Tyler M. Murray (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2012. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Pamela Kiel appeared on the employer's behalf and presented testimony from two witnesses, Julie Church and Laine Cooney. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the employer's protest timely? Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective December 18, 2011. A notice of claim was mailed to the employer's last-known address of record on December 22, 2011. The employer's representative received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by January 3, 2012. The protest was not filed until it was postmarked on January 4, 2012, which is after the date noticed on the notice of claim.

The employer's representative claims analyst, Church, completed the information on the protest form on January 3, 2012. She made six attempts to fax the protest to the Agency Claims Section that afternoon. She received error message each time. At about 2:30 p.m. she called a voice number at the Claims Section and spoke to a clerk to ask if there was an alternative fax number she could use, and was told there was not. When she continued to have problems

getting the fax to go through, at about 3:30 p.m. she called and spoke to a supervisor in the Claims Section, again asking if there was an alternative fax number she could use, and was again told there was not, that the supervisor was aware that there was some problem with the fax machine, but advising that Church just keep trying to fax. Church followed that advice, but the fax still did not go through that day. On January 4 Church recontacted the Claims Section supervisor and reported that the fax had never gone through; she was then advised that she should put the protest in the mail, which she did.

The claimant started working for the employer on December 20, 2010. He worked part time (about 20 hours per week on average) as a night stock/clerk at the employer's Pleasant Hill, Iowa store. His last day of work was the shift that began the evening of July 5 and finished on the morning of July 6. He was scheduled for shifts thereafter on July 11, July 12, July 13, and July 16, but was a no-call/no-show for work after the shift that ended on the morning of July 6. The employer considered the claimant to have voluntarily quit by job abandonment.

The claimant has received no unemployment insurance benefits since the separation from employment.

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 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 administrative law judge considers the reasoning and holding of the Beardslee court 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.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes that the employer's representative made a bona fide attempt to submit the protest by the due date and properly contacted an Agency representative for assistance when she encountered difficulty. She was not advised until the next day that if she was having problems faxing that she should put the completed protest into the mail. Therefore, the final delay in having the protest filed timely was due to department error or misinformation. The administrative law judge, therefore, concludes that the protest should be treated as timely filed pursuant to Iowa Code § 96.6-2.

If the claimant voluntarily quit his employment, he is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The intent to quit can be inferred in certain circumstances. For example, failing to report and perform duties as assigned is considered to be a voluntary quit. 871 IAC 24.25(27). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden. Benefits are denied.

DECISION:

The January 11, 2012 (reference 03) decision is reversed. The protest in this case is treated as timely. The claimant voluntarily left his employment without good cause attributable to the employer. As of July 6, 2011, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

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