

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL S PRUDEN
Claimant

APPEAL NO: 14A-UI-11299-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JBL MANUFACTURING INC
Employer

OC: 09/28/14
Claimant: Respondent (2/R)

Iowa Code § 96.5(1) – Voluntary Quit
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's October 29, 2014 (reference 01) determination 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 at the November 19 hearing. Rhonda Beadle, Operations Manager, appeared on the employer's behalf.

After testimony was presented about the timely protest issue, the administrative law judge made a decision on the record that the employer established a legal excuse for filing a late protest. The parties were then given the opportunity to present evidence regarding the reasons for the employment separation or to have this issue remanded to the Benefits Bureau for a fact-finding interview. The parties were advised that since the employment separation was not listed on the hearing they would have to waive their advance notice if they wanted this issue addressed and were prepared to do present testimony about the employment separation. Both the claimant and employer wanted to resolve the employment separation issue, so this issue is also addressed in this decision.

Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the employer established a legal excuse for filing a late protest and the claimant is not qualified to receive benefits because he voluntarily quit for reasons that do not qualify him to receive benefits.

ISSUES:

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

Did the claimant voluntarily quit this employment for reasons that do not qualify him to receive benefits or did the employer discharge him for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for employer in January 2014 as a full-time machine operator. The last day the claimant worked was August 26, 2014. He had five days off for the Labor Day holiday.

The claimant was scheduled to return to work on September 2. He called the employer that day to report he was unable to work because his car broke down and he had to get it fixed. The claimant did not report to work on September 3. The employer does not have a record of the claimant notifying the employer he was unable to work this day. The claimant contacted the employer on September 4. He asked the employer if he could take a leave of absence until late October. The employer understood the claimant wanted to help a friend who had a contract with a carnival. Beadle told the claimant she would have to talk to the owner, Jeff, about his request. After talking to Jeff, Beadle sent the claimant a text stating the owner indicated it was fine for the claimant to leave and if the employer was up to full speed by the end of October, the employer would bring him back to work.

The employer's work was slowing down in September. The claimant actually went to Missouri to help a friend build a deck. The friend needed to build a deck as quickly as possible because his girlfriend had been in a motorcycle accident. Instead of returning in late October, the claimant returned in mid-September. He contacted the employer on September 15 or 16 to find out when he could return to work. After checking with the owner, Beadle told him that the employer understood he was not coming back until the end of October and the employer was not hiring anyone at this time. The claimant became upset because he understood he would have a job when he returned. He hung up on Beadle.

The next day the claimant called again and wanted to talk to the owner. The employer told the claimant then that he should look for another job.

The claimant established a claim for benefits during the week of September 28, 2014. A notice of claim was mailed to the employer. The notice of claim form indicated the notice of claim was mailed on October 2 and due on October 14. The notice of claim had a label indicating the mail and due date were incorrect and the due date was actually October 20, 2014.

The employer received the notice of claim on October 27, 2014. The postmark on the notice of claim was October 24. The employer completed the form and faxed its protest on October 27, 2014.

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 determination states an appeal must be filed within ten days after notification of that determination 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 employer did not receive the notice of claim until October 27 or after the initial stated ten-day deadline of October 20. The evidence establishes the notice of claim was not mailed until October 24. The employer established a legal excuse for filing its protest on October 27, 2014, the same day the employer received the notice of claim. 871 IAC 24.35(2). Therefore, the Appeals Bureau has jurisdiction to review the reasons for the claimant's employment separation.

A claimant is not qualified to receive unemployment insurance benefits if he voluntarily quits employment without good cause attributable to the employer, or an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §§ 96.5(1), (2)a.

The evidence establishes the claimant had a different understanding about the status of his job, if he left to go to Missouri, than the employer understood. The text Beadle sent the claimant on September 4 clearly states the employer had no objection to the claimant leaving and **IF** the employer was up to full speed by the end of October, the employer would bring him back to work. The employer's response to the claimant does not say he was guaranteed a job at the end of October. Instead, the claimant's continued employment was conditioned on if the employer had enough work at the end of October to bring him back. It is understandable why the claimant became upset because he believed he had a job, but he also returned to work about six weeks earlier than he had indicated on September 4. When the claimant returned to Iowa, the employer's work was still slow and the employer was not bringing anyone back to work at that time. The claimant took his frustration out on Beadle by becoming angry and hanging up on her.

The claimant initiated his employment separation on September 4 when he left to go to Missouri to help a friend. When a claimant quits he has the burden to establish he quit for reasons that qualify him to receive benefits. Iowa Code § 96.5(1). The claimant established personal reasons for leaving work, but his reasons do not qualify him to receive benefits. As of September 28, 2014 the claimant is not qualified to receive benefits.

The issue of whether the claimant has been overpaid any benefits since September 28, 2014 will be remanded to the Benefits Bureau to determine.

DECISION:

The representative's October 29, 2014 (reference 01) determination is reversed. The employer established a legal excuse for filing a late protest. Therefore the Appeals Bureau has jurisdiction to address the reasons for the claimant's employment separation since both parties waived advance notice of this issue. The claimant voluntarily quit his employment on September 4, 2014 for reasons that do not qualify him to receive benefits. As of September 28, 2014 the claimant is disqualified from receiving unemployment insurance benefits. This disqualification continues until he has been paid ten times his weekly benefit amount for insured work, provided he is otherwise eligible. The employer's account will not be charged.

The issue of whether the claimant has been overpaid any benefits since September 28, 2014 is **remanded** to the Benefits Bureau to determine.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/can