

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSEPH CLARK**  
Claimant

**APPEAL NO. 08A-UI-04192-ET**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MERCY HOSPITAL**  
Employer

**OC: 01-13-08 R: 02  
Claimant: Respondent (2)**

Iowa Code Section 96.6(2) – Timeliness of Protest  
Iowa Code Section 96.7-2-a – Appeal from the Statement of Charges  
Iowa Code Section 96.5-1 – Voluntary Leaving  
Iowa Code Section 96.3-7 – Recovery of Benefit Overpayment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the April 30, 2008, reference 01, decision that allowed benefits to the claimant and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on May 13, 2008. The claimant provided a phone number prior to the hearing but was not available at that number at the time of the hearing and did not participate in the hearing or request a postponement of the hearing as required by the hearing notice. Kevin Elsberry, Director of Employment Services, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

**ISSUES:**

The issues are whether the employer's protest is timely, whether the appeal from the statement of charges is timely, whether the claimant voluntarily quit his employment and whether he is overpaid benefits.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on January 15, 2008. The employer did not receive the notice of claim and consequently did not file a protest within the ten-day period. The employer has established a good cause reason for the delay. The second issue is whether the employer's protest of its statement of charges is timely. It received the statement of charges March 31, 2008, and filed its protest April 25, 2008, which is within the 30-day period allowed for protest of its statement of charges. Consequently, the protest of its statement of charges is timely.

The claimant was employed as a full-time maintenance worker for Mercy Hospital from May 2, 2005 to June 21, 2007. He told the employer he was leaving to pursue "other interests." His job

was not in jeopardy; he had good evaluations and is eligible for rehire. The employer had continuing work available.

The claimant has claimed and received unemployment insurance benefits since his separation from this employer.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow the administrative law judge concludes the employer protested in a timely manner and filed a timely appeal to its statement of charges.

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.

Iowa Code section 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.
  - a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

The administrative law judge concludes that the employer has not protested within the time period prescribed by the Iowa Employment Security Law but provided a good cause reason for doing so as it did not receive the notice of claim. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979) and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990). The employer filed a timely protest to its statement of charges as it protested within 30 days of receipt.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left his employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

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. 871 IAC 24.25. Leaving because of unlawful, intolerable, or detrimental working conditions would be good cause. 871 IAC 24.26(3),(4). Leaving because of dissatisfaction with the work environment is not good cause. 871 IAC 24.25(1). The claimant has the burden of proving that the voluntary leaving was for good cause attributable to the employer. Iowa Code section 96.6-2. The claimant told the employer he was leaving his job to pursue other interests. He did not cite any unlawful, intolerable or detrimental working conditions or dissatisfaction with the work environment and did not participate in the hearing to establish his leaving was for good cause attributable to the employer. Therefore, benefits must be denied.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Because the claimant's separation was disqualifying, benefits were paid to which the claimant was not entitled. Those benefits must be recovered in accordance with the provisions of Iowa law.

**DECISION:**

The April 30, 2008, reference 01, decision is reversed. The employer has filed a timely protest and a timely protest to its statement of charges. The claimant voluntarily left his employment without good cause attributable to the employer. Benefits are withheld until such time as he has worked in and been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant is overpaid benefits in the amount of \$6,120.00.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

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