

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LUCUS G HOFFMEIER
Claimant

APPEAL NO: 11A-UI-12789-SW

**ADMINISTRATIVE LAW JUDGE
DECISION**

VITA RESTAURANT LLC
Employer

OC: 09/04/11
Claimant: Respondent (4)

Section 96.6-2 – Timeliness of Protest
Section 96.7-2-a(2) – Charges to Employer's Account

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 21, 2011, reference 05, that concluded its protest could not be accepted because it was not filed timely. A hearing was held on January 25, 2012. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Jeremy Neppl participated on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUES:

Did the employer file a timely protest of the claim?
Is the employer's account subject to charge for benefits paid to the claimant?

FINDINGS OF FACT:

The claimant worked part time for the employer as a dishwasher from December 15, 2009, to August 2010. He left work to go to the hospital due to illness. He was diagnosed with a bacterial infection. The claimant never returned to work or had any further contact with the employer. He quit without any cause attributable to the employer.

The claimant filed a new claim for unemployment insurance benefits effective September 4, 2011, because he was on a short term layoff from his employer Luby's. After his separation from the employer the claimant was paid wages of over 10 times his weekly benefit amount.

A notice of claim was mailed to the employer's address of record on September 7, 2011, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of September 19, 2011. The employer's protest was faxed properly on September 18, 2011, before the deadline for filing the protest, but for some reason the fax did not go through to the Agency. When the employer discovered the fax was not received by the Agency, he refaxed it on September 20, 2011.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

Iowa Code § 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer faxed the protest within the time period prescribed by Iowa Code § 96.6-2. The failure to receive the fax was due to an Agency error, which under 871 IAC 24.35(2) would excuse the delay in filing the protest.

Iowa Code § 96.7-2-a(2) provides that the amount of benefits paid to an eligible individual shall be charged against the account of the employers in the base period in the inverse chronological order in which the employment of the individual occurred unless the individual has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause.

The employer's account is not subject to charge for any benefits paid to the claimant because the claimant voluntarily quit employment without good cause attributable to the employer. The claimant, however, is not disqualified from receiving benefits because he has requalified since his separation from the employer.

DECISION:

The unemployment insurance decision dated September 21, 2011, reference 05, is modified in favor the employer. The employer's protest is deemed timely. The employer's account is not subject to charge for benefits paid to the claimant. The claimant is not disqualified from receiving benefits because he has requalified since his separation from the employer.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs