

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAY WENDT
Claimant

APPEAL NO: 11A-UI-10246-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GUITAR CENTER STORES INC
Employer

OC: 06/26/11
Claimant: Respondent (4)

Iowa Code § 96.5(1)a – Quit for Other Employment
Iowa Code § 96.6(2) – Timeliness of Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's July 22, 2011 determination (reference 02) that held the claimant qualified to receive benefits and the employer's account subject to charge because the employer did not file a timely protest. The claimant participated in the hearing. Matt Crain, an ADP employee, Brian Herrin, the store manager, and Matthew Lentz, a sales and training manager, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the claimant is qualified to receive benefits and the employer's account will not be charged.

ISSUES:

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

Did the claimant voluntarily quit his employment for reasons that qualify him to receive benefits?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant started working for the employer in November 2010. He worked part time as a sales associate. In late April or early May 2011, the claimant told the employer he was resigning so he could work more hours at another job he had, Alba Restaurant. The claimant resigned as of May 24, 2011.

After the claimant returned from Jamaica, he worked more hours at Alba and did not establish a claim for benefits until Alba temporarily closed the restaurant for two weeks. The claimant established a claim for benefits during the week of June 26, 2011. On June 29, 2011, the Department mailed a notice to the employer at an old mailing address. Since May 25, 2010, the employer's address of record is in St. Louis, not San Dimas, California. ADP represents the employer in unemployment insurance matters and did not receive the notice of claim from the employer's corporate office in California until July 13. The notice of claim indicated the

employer's protest was due on or before July 11, 2011. On July 14, 2011, the ADP filed the notice of claimant and protested charges to the employer's account.

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 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's representative, ADP, did not receive the notice of claim until July 13 or after the initial ten-day deadline. The employer's representative established a legal excuse for filing the protest on July 14 instead of on or before July 11, 2011. In this case the Department did not mail the notice of claim to the employer's current or correct address of record. IAC 24.35(2). Therefore, the Appeals Section has jurisdiction to consider 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. Iowa Code § 96.5(1). The law states that when a claimant quits so he can work for another employer, the claimant is qualified to receive benefits and the employer's account will not be charged. Iowa Code § 96.5(1)a. The evidence indicates the claimant quit working for the employer so he could work more hours for Alba Restaurant. Under these facts, the claimant is not disqualified from receiving benefits. The employer's account will not be charged.

DECISION:

The representative's July 22, 2011 determination (reference 02) is modified in the employer's favor. The employer did not file a timely protest, but established a legal excuse for filing a late protest. Therefore, the Appeals Section has jurisdiction to consider the reasons for the claimant's employment separation. Since the claimant quit so he could work more hours for another employer, he is not disqualified from receiving benefits. As of June 26, 2011, the claimant is qualified to receive benefits, provided he meets all other eligibility requirements. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs