

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**HANNAH M VECERA**  
Claimant

**APPEAL NO. 11A-UI-09602-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**HARVEYS IOWA MANAGEMENT CO INC**  
Employer

**OC: 05-29-11**  
**Claimant: Respondent (4)**

Iowa Code § 96.6(2) – Timeliness of Protest  
Iowa Code § 96.5(1)a – Voluntary Leaving/Other Employment

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the June 28, 2011, reference 04, decision that allowed benefits and found the notice of protest untimely. After due notice was issued, a hearing was held on August 11, 2011. The claimant did participate. The employer did participate through Tanya Achenbach, Human Resources Generalist. Department's exhibit D-1 was entered and received into the record.

**ISSUES:**

Did the employer file a timely notice of protest?

Did the claimant voluntarily quit her employment without good cause attributable to her employer?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a beverage server as an on call beginning March 23, 2010 through January 4, 2011 when she voluntarily quit to accept other full-time employment at Sapp Bros. She subsequently worked for Sapp Bros full time from January 2011 until June 2011. Continued work was available for the claimant if she had not quit.

The notice of protest was mailed to the employer on June 16, 2011. The notice of protest indicated that the due date for the notice of protest was due on June 16, 2011.

**REASONING AND CONCLUSIONS OF LAW:**

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

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.

The employer did file a timely notice of protest as the notice itself contained a typographical error. The notice could not both be mailed out on June 16, 2011 and a response due to the agency on June 16, 2011. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The employer filed the protest within four days of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code § 96.5-1-a 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. But the individual shall not be disqualified if the department finds that:
  - a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

- (5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

871 IAC 23.43(5) provides:

- (5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

**DECISION:**

The June 28, 2011 (reference 04) decision is modified in favor of the appellant. The employer filed a notice of protest. The claimant voluntarily left her employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 261725) shall not be charged.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/pjs