

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

LEVI J OELBERG
Claimant

APPEAL NO: 10A-UI-16343-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HALF MOON INN
Employer

**OC: 10/24/10
Claimant: Respondent (4)**

Iowa Code 96.6-2 – Timeliness of Protest
Iowa Code 96.7-2-a(2) – Employer Liability

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's November 23, 2010 determination (reference 03) 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 did not respond to the hearing notice or participate in the hearing. Debbie Heine, the manager, appeared on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge finds the employer's account exempt from charge.

ISSUES:

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

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant worked for the employer when he was in high school. After the claimant graduated from high school, he found other employment. The claimant last worked for the employer in late June 2009. The claimant resigned because he had another job.

The claimant established a claim for benefits during the week of October 24, 2010. The employer is one of the claimant's base period employers. On November 2, 2010, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until November 12, 2010 to protest the claimant's receipt of benefits.

The employer has a business post office box. Mail is checked weekly. Heine did not know about the notice of claim until Saturday, November 13. When she picked up the mail. She completed the notice of claim that day and faxed it Monday, November 15, 2010.

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 did not receive the notice of claim until November 13, or after the initial ten-day deadline. The employer established a legal excuse for filing its protest on November 15, 2010. 871 IAC 24.35(2). Therefore, the Appeals Section has legal jurisdiction to relieve the employer's account from charge. See *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 next issue is whether the employer's account is subject to charge. An employer's account is relieved from charge when a claimant voluntarily quits employment without good attributable to the employer or the employer discharges the claimant for reasons amounting to work connected misconduct. Iowa Code § 96.7-2-a(2). Also, under Iowa Code § 96.5-1-a states an employer's account is relieved from charge when a claimant quits for other employment. The facts establish the claimant voluntarily quit his employment to work for another employer. Therefore, the employer's account will not be charged.

DECISION:

The representative's November 23, 2010 determination (reference 03) 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. Since the claimant voluntarily quit for another, he is qualified to receive benefits based on the reasons for this employment separation. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css