

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

CASEY R MOORE  
313½ WASHINGTON  
SAVANNA IL 61074

L A LEASING INC  
SEDONA STAFFING  
612 VALLEY DR  
MOLINE IL 61265

Appeal Number: 05A-UI-05856-DWT  
OC: 05/08/05 R: 04  
Claimant: Respondent (4)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Protest  
Section 96.5-1-a – Employer Liability

STATEMENT OF THE CASE:

Sedona Staffing (employer) appealed a representative's May 25, 2005 decision (reference 03) that concluded Casey R. Moore (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on June 21, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Colleen McGuinty appeared on the employer's behalf. Based on the administrative record and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer file a timely protest?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of May 8, 2005. On May 11, 2005, 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 May 23, 2005 to respond to the notice.

The employer completed the form and faxed it to the Department on May 23, 2005.

The claimant worked for the employer until June 13, 2004. The claimant resigned because he accepted a job with another employer, PDM. Between June 13, 2004 and May 8, 2005, the claimant worked for the other employer and earned more than ten times his weekly benefit amount.

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 record establishes the employer's representative transmitted a completed protest on May 23, 2005, within the time for filing a timely protest. There is no provision that requires the protest to be received by the end of business on the due date. There are, however, provisions allowing for a postmark on the due date to be considered as timely even when the Department does not receive the mailing until after the due date. Theoretically, the postmark in this case was the day and time the employer faxed the protest on May 23, 2005. The administrative law judge concludes the Department erred in holding the employer did not file a timely protest.

Since the employer filed a timely protest, 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. Also, under Iowa Code §96.5-1-a 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.

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

**DECISION:**

The representative's May 25, 2005 decision (reference 03) is modified in the employer's favor. First, the employer filed a timely protest. Next, the employer's account will not be charged. Finally based on this separation, the claimant is not disqualified from receiving unemployment insurance benefits.

dlw/kjf