

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

NICOLE L THORNDYKE
Claimant

APPEAL NO. 08A-UI-03150-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING
Employer

OC: 12/30/07 R: 04
Claimant: Respondent (4)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Sedona Staffing (claimant) appealed a representative's March 20, 2008 decision (reference 08) that concluded the employer's account was subject to charge based on benefits Nicole L. Thorndyke (claimant) may receive because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 15, 2008. 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 she 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 evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

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 established a claim for benefits during the week of December 30, 2007. On January 7, 2008, 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 January 17, 2008, to respond to the notice.

The employer received the notice of claim prior to January 17, 2008. After receiving information from the office the claimant had been assigned work, on January 17, 2008, McGuinty faxed a completed protest to the Claims Section. The employer's fax indicated the fax had been successfully transmitted.

In late February or early March, the employer received its statement of quarterly charges. The employer noticed its account had been charged for benefits various claimants had received and the employer had protested but had never been advised of a fact finding interview or a decision. The employer sent a letter on March 17, 2008, requesting that a decision be made with respect to the claimant as a result of the employer's timely protest. The Department considered the employer's March 17 letter as a protest.

The claimant most recently started a job assignment on August 11, 2006. The claimant completed the job assignment on August 23, 2006. She did not contact the employer for another assignment. The

employer had another job to assign to her. Between August 23, 2006 and December 30, 2007, the claimant worked for the other employers and earned more than ten times her 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 that 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 received the notice of claim prior to January 17, 2008, the initial ten-day deadline to protest. The employer filed a timely protest by faxing its protest to the Department on January 17, 2008. Therefore, there is 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 cause attributable to the employer or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code § 96.7-2-a. Since the claimant did not contact the employer for another job assignment after she completed an assignment on August 23, 2006, for unemployment insurance purposes she voluntarily quit her employment for reasons that exempt the employer's account from charge.

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

DECISION:

The representative's March 20, 2008 decision (reference 08) is modified in the employer's favor. The employer filed a timely protest. Since the claimant requalified before she established her claim for unemployment insurance benefits, she is not disqualified from receiving benefits based on this employment separation. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/kjw