

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DAVID A GEISLER
Claimant

APPEAL NO: 13A-UI-01812-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

CITY OF CLINTON
Employer

OC: 12/23/12
Claimant: Respondent (1)

Section 96.6-2 – Timeliness of Protest
Section 96.5-5c – Separation Pay
871 IAC 24.13(3)c – Dismissal or Separation Pay

STATEMENT OF THE CASE:

The employer appealed a department decision dated February 12, 2013, reference 02, that held it failed to file a timely protest regarding claimant's employment separation on December 1, 2012, and benefits are allowed. A telephone hearing was held on March 13, 2013. The claimant participated. Attorney, Jeff Farwell, participated for the employer. Employer Exhibit 1 was received as evidence.

ISSUES:

Whether the employer filed a timely protest.

Whether claimant received deductible separation pay.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant filed an unemployment claim effective December 4, 2011. The department mailed a notice of claim to the employer. The employer did not protest the claim at that time because it had terminated claimant's employment effective December 1 due to a budget reduction plan that eliminated his job. He received his final pay and accrued vacation. Claimant claimed for and received unemployment benefits.

Claimant filed a second benefit year unemployment claim effective December 23, 2012. A notice of claim was sent to the employer on December 28 and it timely submitted a protest to the department on January 7, 2013. It is protesting claimant's unemployment claim because he signed a full and final release of all claims with the employer on October 2, 2012. Claimant had filed a law suit against the employer and the release is an agreement to settle all claims.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer failed to file a timely protest to claimant's employment separation on December 1, 2011 that includes any final benefits paid to him by reason of his separation.

The employer is not contesting claimant's right to receive unemployment benefits on his December 4, 2011 unemployment claim based on his December 4 employment termination. It did not make any protest to the payment of his final wages and accrued vacation.

The administrative law judge further concludes the employer did file a timely protest to claimant's second benefit year claim effective December 23, 2012, but it does not preclude claimant's right to receive unemployment benefits in any manner.

The employer is contesting claimant's further right to unemployment benefits on his December 23, 2012 claim by reason of his October 2, 2012 agreement (Full and Final Release of All Claims). The agreement shows the employer paid claimant consideration for his release.

Any employee agreement that attempts to preclude an unemployed person from filing for unemployment is contrary to federal law and not binding. Claimant is entitled to claim for benefits on his December 23, 2012 claim. Since the employer is not contesting the December 1, 2011 employment separation, the issue is whether its timely protest regarding the compensation paid to claimant should be deducted from his unemployment benefit.

The administrative law judge concludes claimant did not receive any disqualifying separation pay from the employer due to the waiver of all claims clause in the Full and Final Release Agreement.

The employer requirement that claimant waive all claims and release it from liability means that the separation pay is not just for severance, but consideration for a liability waiver that is not disqualifying pay.

DECISION:

The department decision dated February 12, 2013, reference 02, is affirmed. The employer failed to file a timely protest to claimant's December 1, 2011 employment separation, and benefits are allowed on the December 4, 2011 unemployment claim.

The employer filed a timely protest to claimant's second benefit year claim effective December 23, 2012. The employer compensation paid to claimant is not deductible from unemployment benefits on this claim as it is not considered as a form of separation pay.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/tll