

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

EDNA R LOOK

Claimant

APPEAL NO: 10A-UI-03459-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

M & J LLC

BUBBLES PROFESSIONAL DRYCLEANING

Employer

OC: 11/30/08

Claimant: Respondent (2/R)

Section 96.6-2 – Timeliness of Protest

Section 96.5-1 – Voluntary Leaving

Section 96.3-7 – Recovery of Overpayment of Benefits

STATEMENT OF THE CASE:

M & J L.L.C. / Bubbles Professional Drycleaning (employer) appealed a representative's February 23, 2010 decision (reference 01) that concluded Edna R. Look (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 20, 2010. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Jeri Postma 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.

ISSUES:

Was the employer's protest timely or are there legal grounds under which it should be treated as timely? Did the claimant voluntarily quit for a good cause attributable to the employer?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective November 30, 2008. A notice of claim was mailed to the employer's address on December 10, 2008. The address to which it was mailed was P.O. Box 68, Sheldon, IA 51201. This was the address for the accountant previously used by the employer, but which had not been used by the employer for several years prior to 2008. Contribution and wage reports filed by the employer at least by October 31, 2008 indicate the mailing address of the employer as 511 3rd Ave., Sheldon IA 51201. The employer did not receive the notice mailed to its former accountant's office. The notice contained a warning that a protest must be postmarked or received by the Agency by December 22, 2008. The employer also did not receive quarterly statements of charges sent on February 9, 2009, May 8, 2009, and August 7, 2009, also to the P.O. Box 68 address, which contained charges for benefits paid to the claimant.

The employer did not make a protest until February 21, 2010. On or about February 16 a postal carrier was delivering another piece of mail from the Agency addressed to the employer regarding the charges for the benefits paid to another former employee; the postal carrier recognized that the address listed was not the employer's address, and delivered the piece of mail directly to the employer. The employer then began investigating the matter and learned that the mail had been going to its former accountant's office. When the employer contacted the person at the former accountant's office who handled the mail, the person acknowledged that they had regularly been receiving the employer's mail but had not been forwarding the mail, but had been disposing of it. As part of its investigation, the employer contacted the Agency and learned that not only had the other former employee been receiving benefits, the claimant had been receiving benefits from her claim year in 2008. The employer then responded to the Agency on February 21, 2010 to protest the claimant's eligibility.

The claimant started working for the employer on November 1, 2007. She worked part time (about 20 hours per week) as a presser. Her last day of work was July 11, 2008. She voluntarily quit as of that date. Her reason for leaving was to accompany her boyfriend who was moving to Florida.

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 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 administrative law judge considers the reasoning and holding of the Beardslee court 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.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes that the employer's representative did not receive the notice of claim. The employer was not responsible for the delay in receiving the notice of claim. The employer did file its protest within ten days of actually being notified of the claimant's claim. The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2.

If the claimant voluntarily quit her employment, she is not eligible for unemployment insurance benefits unless it was for good cause attributable to the employer. Iowa Code § 96.5-1.

Rule 871 IAC 24.25 provides that, in general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an

employee with the employer from whom the employee has separated. A voluntary leaving of employment requires an intention to terminate the employment relationship and an action to carry out that intent. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993); Wills v. Employment Appeal Board, 447 N.W.2d 137, 138 (Iowa 1989). The claimant did express or exhibit the intent to cease working for the employer and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless she voluntarily quit for good cause.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify her. Iowa Code § 96.6-2. Leaving employment in order to move to another locality to be with a significant other is not good cause attributable to the employer. 871 IAC 24.25(2), (10). The claimant has not satisfied her burden. Benefits are denied.

The unemployment insurance law provides that benefits must be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of determining the amount of the overpayment and whether the claimant is eligible for a waiver of overpayment under Iowa Code § 96.3-7-b is remanded the Claims Section.

DECISION:

The February 23, 2010 (reference 01) decision is reversed. The protest in this case is treated as timely. The claimant voluntarily left her employment without good cause attributable to the employer. As of July 11, 2008, benefits are withheld until such time as the claimant has worked in and been paid wages for insured work equal to ten times her weekly benefit amount, provided she is otherwise eligible. The matter is remanded to the Claims Section for investigation and determination of the overpayment issue and whether the claimant is eligible for a waiver of any overpayment.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/pjs