

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SAMUEL E SHACKFORD
Claimant

APPEAL NO: 14A-UI-02449-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ALL SEASONS CLEANING MANAGEMENT
Employer

OC: 02/02/14
Claimant: Respondent (4)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated February 26, 2014, reference 03, that concluded its protest could not be accepted because it was not filed timely. A telephone hearing was held on March 26, 2014. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Theresa Jones participated on behalf of the employer. Exhibit One was admitted into evidence at the hearing.

ISSUES:

Did the employer file a timely protest of the claim?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

FINDINGS OF FACT:

The claimant worked part time for the employer as a cleaner from April 4, 2013, to May 20, 2013. He voluntarily quit his employment due to family problems and securing another job. Since May 20, 2013, he has worked and earned at least ten times his weekly benefit amount in employment with QPS Staffing Service.

The claimant filed a new claim for unemployment insurance benefits with an effective date of February 2, 2014, after his employment with QPS Staffing ended. A notice of claim was mailed to the employer on February 4, 2014. The notice of claim had the wrong suite number for the employer and was not received at the employer's office until February 17. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of February 14, 2014. The employer's protest was faxed on February 18, 2014.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

Iowa Code § 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. On the issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The next question is whether the employer had a reasonable opportunity to file their 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 evidence establishes that the employer did not receive the notice of claim until after the deadline and promptly protested the claim. The protest is deemed timely.

The claimant is eligible for benefits since he voluntarily quit employment without good cause attributable to the employer but has requalified since that time due to his wages from employment at QPS Staffing.

Iowa Code § 96.7-2-a(2) provides that the amount of benefits paid to a claimant shall be charged against the account of the employers in the base period unless the claimant has been discharged for work-connected misconduct or voluntarily quit employment without good cause attributable to the employer or refused suitable work without good cause. The employer's account is not subject to charge.

DECISION:

The unemployment insurance decision dated February 26, 2014, reference 03, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer is not subject to charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css