

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DUSTIN J WILSON**  
Claimant

**APPEAL NO. 09A-UI-17001-CT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ADVANCE CONSTRUCTION INC**  
Employer

**Original Claim: 12/21/08  
Claimant: Respondent (1)**

Section 96.5(2)a – Discharge for Misconduct

**STATEMENT OF THE CASE:**

Advance Construction, Inc. filed an appeal from a representative's decision dated October 29, 2009, reference 09, which held that the issue of Mr. Wilson's separation from Advance Construction, Inc. could not be adjudicated because there was no timely protest. After due notice was issued, a hearing was held by telephone on December 17, 2009. The employer participated by Ron Kelchen, Tony Crouse, and Tom Oberbreckling, Partners. Mr. Wilson did not respond to the notice of hearing.

**ISSUE:**

At issue in this matter is whether the agency has jurisdiction over the issue of Mr. Wilson's January 7, 2009 separation from Advance Construction, Inc.

**FINDINGS OF FACT:**

Having heard the testimony and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Wilson began working for Advance Construction, Inc. in November of 1998. He worked full-time as a laborer and last performed services on December 20, 2008, when he was laid off. He was contacted on December 27 to return to work for one week on December 29. Mr. Wilson agreed to return, but failed to do so. On January 6, 2009, he was told to meet with the employer at 7:00 a.m. on January 7. When he did not appear for the meeting, the employer called him and he said he overslept. He was told his services were no longer needed.

Mr. Wilson filed a claim for job insurance benefits effective December 21, 2008. Notice of the claim was mailed to the employer on December 26. The notice indicated that any protest to the claim had to be filed by January 5, 2009. The employer returned the protest on January 9 indicating that Mr. Wilson had refused suitable work or recall. There was no indication on the protest that he had been discharged. The employer did indicate during the fact-finding interview held on February 4, 2009 that he had been discharged.

On February 11, 2009, Workforce Development issued a determination (reference 02) disqualifying Mr. Wilson from receiving benefits from December 28, 2008 through January 3, 2009 based on his failure to accept the work that was to begin on December 29. On February 12, a decision was issued (reference 03) disqualifying him from receiving benefits from January 4 through January 10, 2009 because of his failure to accept work on January 7.

Mr. Wilson claimed job insurance benefits for each week from December 21, 2008 through August 22, 2009. On May 8, 2009, Workforce Development mailed the employer a charge statement for the first quarter of 2009, which reflected benefits paid to Mr. Wilson and charged to the employer's account. On August 7, the employer was mailed the charge statement for the second quarter of 2009, which reflected benefits paid to Mr. Wilson. The employer did not appeal from either charge statement.

On August 27, 2009, Workforce Development issued a determination (reference 06) disqualifying Mr. Wilson from receiving benefits on a finding that he quit his employment with Advance Construction, Inc. on January 7, 2009 for no good cause attributable to the employer. He did not appeal the adverse determination. The decision herein allowing benefits to Mr. Wilson based on the January 7 separation was mailed to the parties on October 29, 2009.

**REASONING AND CONCLUSIONS OF LAW:**

The threshold issue in this matter is whether there is jurisdiction to adjudicate Mr. Wilson's January 7, 2009 separation from Advance Construction, Inc. The employer was given the opportunity to protest his entitlement when the notice of claim was mailed on December 26, 2008. The employer had until January 5, 2009 to file a protest but did not do so. The protest was not filed until January 9, 2009. The employer had a second opportunity to protest the payment of benefits to Mr. Wilson when it was mailed the quarterly charge statement on May 8, 2009. Although the charge statement indicated that he was still receiving benefits, the employer did not file an appeal.

The record does not disclose what prompted the representative's decision of August 27, 2009. There was no timely protest or appeal pending that would authorize the determination. The administrative law judge concludes that, absent an appeal or timely protest by the employer, the agency lacked jurisdiction to adjudicate the separation issue at that point. The representative's decision of October 29, 2009 merely corrects that flaw. For this reason, it shall be affirmed.

**DECISION:**

The representative's decision dated October 29, 2009, reference 09, is hereby affirmed. Workforce Development lacked jurisdiction to rule on Mr. Wilson's January 7, 2009 separation from Advance Construction, Inc., as the employer failed to file a timely protest to the claim and failed to appeal from the quarterly statement on which benefits were first charged for Mr. Wilson. Benefits are allowed, provided he is otherwise eligible.

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Carolyn F. Coleman  
Administrative Law Judge

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Decision Dated and Mailed

cfc/kjw