

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ABEL CHAVEZ

Claimant

APPEAL NO: 09A-UI-09096-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

TYSON FRESH MEATS INC

Employer

OC: 03/01/09

Claimant: Respondent (4)

Section 96.6-2 – Timeliness of Protest
Section 96.5-1 – Voluntary Leaving/Requalification

STATEMENT OF THE CASE:

Tyson Fresh Meats, Inc. (employer) appealed a representative's June 11, 2009 decision (reference 01) that concluded Able Chavez (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 July 14, 2009. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Mike Lefevre appeared on the employer's behalf and presented testimony from one other witness, Brandi Henry. During the hearing, Exhibit A-1 was entered into evidence. The administrative law judge takes official notice of materials found in the Agency records which indicate the claimant had employment and wages from a Nebraska employer subsequent to the employment with the employer; if either party objects to this notice being taken without an opportunity by the party to review the records, the objection must be made in writing delivered to the administrative law judge's office within seven days of the date of this decision. 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:

Should the employer's protest be treated as timely? Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective March 1, 2009. A notice of claim was mailed to the employer's representative's last-known address of record on March 10, 2009. The employer's representative received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by March 20, 2009. Ms. Henry, the employer's representative's claim specialist, prepared a response to the notice on March 12, 2009, and submitted the response to be delivered to the United States Postal

Service. The Agency did not process a protest as filed until the employer's representative followed up on June 1, 2009 in response to a May 8, 2009 quarterly statement of charges.

The claimant started working for the employer on September 12, 2007. He worked full time as laborer on the second shift in the pork packaging department of the employer's Council Bluffs, Iowa case ready meat handling facility. His last day of work was December 7, 2007. On December 5 he gave his notice that he was voluntarily quitting as of December 7 as he wanted to return to Mexico for a period of time to visit his sick grandmother.

When he established his claim for unemployment insurance benefits in 2009, his weekly benefit amount was determined to be \$239.00. Agency records show that after the claimant's separation from this employer, he earned insured wages from one or more other employers in Nebraska exceeding \$2,390.00.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this matter is whether the employer filed a timely protest. 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 the employer's representative placed a completed protest into the custody of the United States Postal Service on March 12, 2009, within the time for filing a timely protest. The administrative law judge concludes that failure to have the protest delivered or received within the time prescribed by the Iowa Employment Security Law was due to error, delay or other action of the Agency or the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2.

The substantive issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code § 96.5-1-g provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department. But the individual shall not be disqualified if the department finds that:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

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. The claimant did express his intent not to continue working with the employer. A voluntary leaving of employment requires an intention to terminate the employment relationship. Bartelt v. Employment Appeal Board, 494 N.W.2d 684 (Iowa 1993). The claimant did exhibit the intent to quit and did act to carry it out. The claimant would be disqualified for unemployment insurance benefits unless he voluntarily quit for good cause attributable to the employer.

The claimant has the burden of proving that the voluntary quit was for a good cause that would not disqualify him. Iowa Code § 96.6-2. The claimant has not satisfied his burden.

However, the administrative law judge further concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The representative's June 11, 2009 decision (reference 01) is modified in favor of the appellant. The employer's protest was timely. The claimant voluntarily left his employment without good cause attributable to the employer, but has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css