

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JARED L BARNES

Claimant

SOY SPECIALTIES INC

Employer

APPEAL NO. 09A-UI-11656-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/12/09

Claimant: Respondent (4)

Section 96.6-2 – Timeliness of Protest/ Appeal
Section 96.5-1-g – Voluntary Quit/Requalification

STATEMENT OF THE CASE:

The employer appealed a department representative's decision dated August 3, 2009, reference 01, that held it failed to file a timely protest regarding the claimant's separation from employment on August 4, 2008, and benefits are allowed. A telephone hearing was held on August 27, 2009. The claimant participated. Susan Brubaker, Secretary/Treasurer, participated for the employer. Employer Exhibit One and Two was received as evidence.

ISSUES:

Whether the protest or appeal is timely.

Whether the claimant voluntarily left with good cause attributable to the employer.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony of the witnesses, and having considered the evidence in the record, finds that: The claimant worked a seasonal, full-time labor job from the summer of 2007 to the summer of 2008. The claimant quit his job to go back to school about August 4, 2008. Since the claimant separated from employment with the employer, he was employed by Monsanto (ER #304958), and he has re-qualified for benefits by earning more than ten times his weekly benefit amount for insured work (\$2,430).

The department tax bureau reviewed employer tax account records to add four digits to each zip code. A department representative added four digits to the employer's zip code, but also changed the street address to 102 E G Ave(nue) that is incorrect. The department mailed the claimant's notice of claim to the incorrect employer address on July 16, 2009. When the employer received it on July 29, it immediately faxed a protest and it requested the department to correct the address of record to PO Box 7, Grundy Center, Iowa 50638. The department mailed the August 3, 2009 decision to the incorrect address. The employer received the decision on August 12, and it filed an immediate appeal on August 14.

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.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes that the employer filed a timely a timely protest and appeal. The two-day delay for filing a protest within ten days, and the one-day delay for filing an appeal within ten days, was due to department error in mis-recording the employer's address of record.

Iowa Code section 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.

The administrative law judge further concludes the claimant voluntarily quit without good cause attributable to the employer on August 4, 2008 to go back to school, but is eligible for benefits by reason of re-qualification by earning ten times his weekly benefit amount with Monsanto (ER#304958).

While the claimant's separation from employment at Soy Specialties on August 4, 2008 is disqualifying, he has re-qualified for benefits and is eligible by earning ten times his weekly benefit amount with a subsequent employer (Monsanto).

DECISION:

The decision of the representative dated August 3, 2009, reference 01, is modified in favor of the employer. The employer affected a timely protest and appeal. The claimant voluntarily quit without good cause attributable to the employer on August 4, 2008, but has requalified for benefits with Monsanto. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs