

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS SECTION  
1000 EAST GRAND—DES MOINES, IOWA 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI**

**JOHNATHON A CONNELLY  
2544 - 130<sup>TH</sup> ST  
WINFIELD IA 52659**

**TM1 STOP LLC  
1 QUAIL CREEK CIRCLE  
NORTH LIBERTY IA 52317**

**Appeal Number: 05A-UI-02763-SWT  
OC: 02/13/05 R: 04  
Claimant: Respondent (4)**

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

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(Administrative Law Judge)

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(Decision Dated & Mailed)

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

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated March 7, 2005, reference 03, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on April 4, 2005. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. John Burchert participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

The claimant worked for the employer from August 15 to December 15, 2003. He voluntarily quit his employment because he got into an accident with his car and did not have transportation to work. After quitting employment, the claimant was paid wages from

subsequent employers totaling \$3,063.00. These wages were earned prior to the claimant filing a new claim for unemployment insurance benefits with an effective date of February 13, 2005. His weekly benefit amount was determined to be \$119.00.

A notice of claim was mailed to the employer's address of record on February 18, 2005. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of February 28, 2005. The employer did not receive the notice of claim until a day or two after the deadline for protesting. The employer's protest was faxed on March 4, 2005, which was within a day or two after the employer received the notice of claim.

#### 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 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.

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. In addressing an 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).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code section 96.6-2, but the failure to file a timely protest was due to an Agency error or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing the protest. The protest is deemed timely.

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 evidence establishes that the claimant requalified by earning over ten times his weekly benefit amount after separating from employment with the employer. He is not subject to

disqualification based on his separation from work with the employer and the employer's account will not accrue any charges pursuant to 871 IAC 23.43(8)d.

DECISION:

The unemployment insurance decision dated March 7, 2005, reference 03, is modified in favor of the employer. The employer's protest shall be accepted as timely. The claimant is not subject to disqualification since he requalified by earning ten times his weekly benefit amount in subsequent employment. The employer's account is not chargeable for benefits paid to the claimant.

saw/sc