

**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**

**KATHERINE J MCCRAY
43 – 5TH ST NW
OELWEIN IA 50662**

**M & T INVESTMENTS INC
313 S LOCUST ST
MONTICELLO IA 52310-1724**

**Appeal Number: 04A-UI-02893-DWT
OC 08/18/03 R 04
Claimant: Respondent (5)**

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, 4th 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 are 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Protest/Appeal

STATEMENT OF THE CASE:

M & T Investments, Inc. (employer) appealed a representative's March 5, 2004 decision (reference 03) that concluded Katherine J. McCray (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on April 5, 2004. The claimant participated in the hearing. Julie Koch, the secretary/bookkeeper, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant worked for the employer from mid-June 2002 through August 19, 2002. The employer's business is Happy Joes. When the claimant worked for the employer, she was a manager-in-training. The employer discharged the claimant on August 19, 2002 for nondisqualifying reasons. The claimant established a claim for unemployment insurance benefits during the week of August 18, 2002. At that time, the employer protested charges against its account and a fact-finding interview was completed. Based on information presented during the fact-finding interview, a representative issued a September 13, 2002 decision. This decision concluded the claimant was qualified to receive unemployment insurance benefits and the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons. The September 13, 2002 decision was not appealed. The claimant received benefits during this benefit year but the employer's account was not charged because the employer was not one of the claimant's base period employers.

Between August 19, 2002 and August 17, 2003, the claimant worked for another employer(s) and earned more than ten times her weekly benefit amount. The claimant established a subsequent benefit year during the week of August 17, 2003. The employer is a base period employer during this benefit year.

On February 4, 2004, the employer received a statement of charges for the fourth quarter of 2003 and noticed charges against its account based on benefits paid to the claimant. The employer appealed any charges against its account because the employer did not receive a notice of claim when the claimant established a new benefit year during the week of August 17, 2003.

REASONING AND CONCLUSIONS OF LAW:

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 Supreme 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 reasoning and holding of the Beardslee court is considered 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. The facts indicate the employer or a representative received a notice of claim in August 2002 after the claimant established a claim during the week of August 18, 2002. A representative for the employer participated in a fact-finding interview. The employer did not appeal a representative's September 13, 2002 decision that concluded the claimant had been discharged for nondisqualifying reasons. The employer's account was not charged any benefits the claimant may have received from August 18, 2002 through August 16, 2003 because the employer was not a base period employer.

It is not known when or if the Department sent the employer another notice of claim after the claimant established a subsequent benefit year during the week of August 17, 2003. Since the representative's September 13, 2002 is a final decision, the Appeals Section does not have any legal authority to adjudicate the August 19, 2002 separation again. Iowa Code §96.6-2. The September 13, 2002 decision concluded the employer's account was subject to charge because the claimant had been discharged for nondisqualifying reasons.

If the August 19, 2002 separation could again be reviewed, the evidence still establishes the claimant was discharged for nondisqualifying reasons. This means, the employer's account is subject to charge.

After the claimant worked for the employer but prior to establishing her August 17, 2003 claim for benefits, she earned ten times her weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's March 5, 2004 decision (reference 03) is modified but the modification has no legal consequence. The claimant's August 19, 2002 separation was previously adjudicated and the employer did not appeal a representative's September 13, 2002 decision. The September 13, 2002 decision concluded the claimant had been discharged for nondisqualifying reasons, which means the employer's account is subject. If the September 13, 2002 decision had not been issued, the employer discharged the claimant for nondisqualifying reasons on August 19, 2002. Therefore, the employer's account is subject to charge when the employer is one of the claimant's base period employers.

dlw/b