

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ERICA L HAMLIN**

Claimant

**APPEAL NO. 08A-UI-02546-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**

Employer

**OC: 11/11/07 R: 03  
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 March 5, 2008 decision (reference 02) that concluded Erica L. Hamlin (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 March 31, 2008. The claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Heather Woodward of TALX Employer Services appeared on the employer's behalf. 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 November 11 2007. A notice of claim was mailed to the employer's last known address of record on November 15, 2007. The employer's representative did not receive the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by November 26, 2007. The protest was not treated filed until the employer's representative contested the fourth quarter statement of charges on February 28, 2009, which is after the date noticed on the notice of claim. Ms. Woodward was the employer's representative responsible for the employer's account and would have handled the notice of claim had it been delivered.

The claimant's last day of work was July 6, 2007. When she established her claim for unemployment insurance benefits, her weekly benefit amount was determined to be \$265.00. Agency records show that after the claimant's separation from this employer, she earned insured wages from another employer exceeding \$2,650.00.

#### **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 an 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 that the employer's representative did not receive the notice of claim and was not aware of the claimant's claim until the fourth quarter statement of charges was mailed on February 8, 2008. The employer was not responsible for the delay in receiving the notice of claim, but the delay was due to department error or misinformation or delay or other action of the United States Postal Service. The employer did file its protest within ten days of actually receiving the notice. 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's July 24, 2007 separation disqualifies her from benefits and whether the employer's account subject to charge. The wages the claimant earned with the employer are in his base period. The employer asserted the claimant voluntarily quit as of July 24, 2007. However, this issue does not need to be resolved because after the claimant worked for the employer but before she filed his claim for benefits December 20, 2007, she earned more than \$3,220.00 in wages from another employer. As a result, the reasons for her separation in July 2007 do not affect the claimant's eligibility to receive unemployment insurance benefits. 871 IAC 24.28(1). This also means the employer's account will not be charged for any benefits the claimant receives.

#### **DECISION:**

The representative's March 5, 2008 decision (reference 02) is modified in favor of the appellant. The employer's protest was timely. The claimant is requalified to receive unemployment

insurance benefits after her July 6, 2007 separation. Since the claimant has requalified to receive unemployment insurance benefits, the employer's account of the employer shall not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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