

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MELVIN M GRASSFIELD

Claimant

APPEAL NO. 09A-UI-02336-CT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BERNET CONSTRUCTION CO

Employer

OC: 12/14/08

Claimant: Respondent (4-R)

Section 96.4(3) – Able and Available
Section 96.6(2) – Timeliness of Protests

STATEMENT OF THE CASE:

Bernet Construction Company (Bernet) filed an appeal from a representative's decision dated February 11, 2009, reference 02, which held that the protest to Melvin Grassfield's claim was not filed timely. After due notice was issued, a hearing was held by telephone on March 9, 2009. Mr. Grassfield participated personally. The employer participated by Scott Irish, Office Manager.

ISSUE:

At issue in this matter is whether the employer filed a timely protest to Mr. Grassfield's claim. If the protest is found to be timely, the next issue is whether he satisfies the availability requirements of the law.

FINDINGS OF FACT:

Having heard the testimony of the witnesses and having reviewed all of the evidence in the record, the administrative law judge finds: Mr. Grassfield began working for Bernet in 1983 as a full-time laborer. He was laid off for the season on November 26, 2008. He reopened an old claim effective November 30, 2008 and filed a new claim effective December 14, 2008. The employer was notified of both claims but did not file any protest. Because it was a seasonal layoff, the employer saw no need to file a protest.

The employer learned late in December of 2008 that Mr. Grassfield had plans to retire. His retirement was effective December 1, 2008. He is looking for full-time work but has no plans to return to construction work. He would normally be recalled to work with Bernet in mid-March. The employer protested Mr. Grassfield's entitlement to benefits in a notice to Workforce Development on February 6, 2009 on the basis that he had retired.

REASONING AND CONCLUSIONS OF LAW:

The employer had ten days in which to protest Mr. Grassfield's entitlement to job insurance benefits. See Iowa Code section 96.6(2). Given the fact that he was on his usual seasonal

layoff when the claims were filed, it was not unreasonable for the employer to forego a protest as there was no reason to protest at that time. It is concluded, therefore, that the employer's failure to file a timely protest was not a fatal error.

The employer's notice to Workforce Development on February 6, 2009 raised the issue of Mr. Grassfield's availability for work. Although he retired effective December 1, he is unemployed due to a layoff and not his retirement. In other words, he would be unemployed even if he had not retired. His retirement becomes a separation issue at the point when he would be expected to return to work following the seasonal layoff. For the above reasons, no disqualification is imposed at this time.

The employer has raised the issue of whether Mr. Grassfield's job insurance benefits should be reduced based on his receipt of a pension to which the employer makes contributions. This issue has not been adjudicated by Workforce Development. Therefore, the issue shall be remanded to Claims for an investigation and determination.

DECISION:

The representative's decision dated February 11, 2009, reference 02, is hereby modified. The employer was not required to file a protest as Mr. Grassfield was on a seasonal layoff. Benefits are allowed, provided he is otherwise eligible, as his unemployment is due to a layoff and not his retirement. This matter is remanded to Claims to determine if Mr. Grassfield's job insurance benefits should be reduced because of his receipt of a pension to which Bernet makes contributions.

Carolyn F. Coleman
Administrative Law Judge

Decision Dated and Mailed

cfc/pjs