

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JAMIE M BEAL
Claimant

APPEAL NO. 15A-UI-06408-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

GENESIS DEVELOPMENT
Employer

OC: 05/10/15
Claimant: Appellant (2)

Iowa Code Section 96.6(4) – Previously Adjudicated Issue
Iowa Code Section 96.5(1) – Voluntary Quit

STATEMENT OF THE CASE:

Jamie Beal filed a timely appeal from the May 27, 2015, reference 01, decision that disqualified her for benefits in connection with a second claim year and that relieved the employer of liability for benefits in connection with a second claim year, based on an Agency conclusion that Ms. Beal had voluntarily quit on May 1, 2014 without good cause attributable to the employer. An appeal hearing was set for July 13, 2015. Ms. Beal was available at the time of the hearing, but the employer representative was not available at the number the employer provided for the hearing. Upon further review of the administrative file, the administrative law judge concludes that a hearing is unnecessary and that a decision granting the remedy request by the claimant may be entered based on the Agency's administrative records and the law. The administrative law judge hereby takes official notice of the Notice of Claim mailed to the employer on May 7, 2014 in reference to the claim year that started for the claimant on May 4, 2014. The administrative law judge takes official notice of the Agency's administrative record indicating that the employer did not respond to the May 7, 2014 notice of claim. The administrative law judge takes official notice of the employer's status as a base period employer in connection with the current and previous claim years. The administrative law judge takes official notice of the Agency's administrative record of benefits disbursed to the claimant in connection with the claim year that started May 4, 2014. The administrative law judge takes official notice of the charges to the employer's account in connection with benefits disbursed to the claimant in connection with the claim year that started May 4, 2014.

ISSUE:

Whether the separation from the employment has been previously adjudicated and whether that adjudication continues to bind the parties.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Jamie Beal separated from her employment with Genesis Development on or about May 1, 2014. Ms. Beal established a claim for unemployment insurance benefits that was effective May 4, 2014. On May 7, 2014, Iowa Workforce Development (IWD) mailed a notice of claim to

the employer to alert the employer to Ms. Beal's claim for benefits and to alert the employer to its potential or actual liability for benefits. The notice of claim contained a May 19, 2014 deadline for the employer's response. The employer did not respond to the May 7, 2014 notice of claim or otherwise protest the claim for benefits. Because the employer did not protest the claim, no fact-finding interview occurred. Because the employer did not protest the claim, IWD disbursed \$6,875.00 in benefits to Ms. Beal for the period of May 18, 2014 through November 18, 2014. A substantial portion of those benefits were assessed to the employer's account. The employer did not contest the charges to the employer's account.

The benefit year that started for Ms. Beal on May 4, 2014, expired on May 2, 2015. Ms. Beal then established a new original claim for benefits in a second claim year that was effective May 10, 2015. On May 15, 2015, IWD mailed a new notice of claim to the employer. The notice of claim provided a May 26, 2015 deadline for the employer's response. On May 22, 2015, the employer filed its protest and referenced the May 1, 2014 separation from the employment.

REASONING AND CONCLUSIONS OF LAW:

Unless appealed in a timely manner and reversed on appeal, a finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of IWD, administrative law judge, or the employment appeal board, is binding upon the parties in proceedings brought under this chapter. See Iowa Code section 96.6(3) and (4).

Iowa Admin. Code r. 871-24.35(1) provides:

(1) Except as otherwise provided by statute or by department rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the department shall be considered received by and filed with the department:

a. If transmitted via the United States postal service or its successor, on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service or its successor, on the date it is received by the department.

Iowa Admin. Code r. 871-24.35(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.

Iowa Code § 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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that 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 court to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

Iowa Code § 96.7-2-a(6) provides:

2. Contribution rates based on benefit experience.
 - a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.

By failing to protest the original claim that was effective May 4, 2014, the employer conceded liability for benefits paid to the claimant based on the claimant's May 1, 2014 separation from the employment. All actions taken by IWD in connection with the May 4, 2014 original claim reflect the absence of an employer protest and the employer's acquiescence in liability for benefits paid to the claimant. The claimant has not returned to perform further work for the employer since the May 1, 2014 separation. The employer's failure to protest benefits in connection with the benefit year that began on May 4, 2014 bars the employer from now attempting to re-litigate the separation in connection with the benefit year that was effective May 10, 2015. The claimant is eligible for benefits in connection with the claim year that started May 10, 2015, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

DECISION:

The May 27, 2015, reference 01, is reversed. The Agency has previously adjudicated the claimant's eligibility for benefits and the employer's liability for benefits based on the May 1, 2014 separation to allow benefits to the claimant provided she is otherwise eligible and to hold the employer liable for benefits. The prior adjudication that occurred in the previous benefit year continues to bind the parties in the new claim year that was effective May 10, 2015. The claimant is eligible for benefits in connection with the claim year that started May 10, 2015, provided she meets all other eligibility requirements. The employer's account may be charged for benefits.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/mak