

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ELIZABETH K SCHLUETER
Claimant

JAMES HOLADAY
Employer

APPEAL NO. 14A-UI-10188-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/17/14
Claimant: Respondent (5)**

Section 96.3-5 – Business Closing
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated September 25, 2014, reference 01, which concluded the claimant was eligible for business-closing benefits. A telephone hearing was held on November 5, 2014. The parties were properly notified about the hearing. The claimant participated in the hearing. Lyndsey Kaufman participated in the hearing on behalf of the employer. Exhibits A-1, One, and Two were admitted into evidence at the hearing.

ISSUES:

Did the employer file a timely protest and is the employer permitted to protest the claimant's receipt of regular unemployment insurance benefits?

Is the claimant eligible for business-closing benefits in addition to regular unemployment insurance benefits?

FINDINGS OF FACT:

The employer is a satellite television sales and service, internet, and phone business. Up until August 2014 the employer had two offices—the main office in Mount Pleasant and an office in Burlington, Iowa. The claimant worked as a secretary for the employer in its Burlington office. She was the only employee at the office. James Holaday is the owner of the business.

During the first week of August 2014 James Holaday visited the office in Burlington, Iowa. He saw cardboard cutout advertising displays and promotional brochures for a competitive business, Exede High Speed Internet in the office. The brochures were on the counter next to materials for DISH network, which is a service sold by the employer. A short time later, he was informed that his representative, Efrain Gutierrez, was promoting Exede High Speed Internet through the Burlington office. He believed that the claimant was involved. He decided to discharge the claimant and close the store. Holaday then informed the claimant that she was no longer needed and he was closing the store on August 18.

A notice of claim was mailed to the employer's address of record on August 20, 2014 and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of September 2, 2014. The employer never sent a protest of the claim. For some reason, Holaday thought he would be getting another document to protest the claim.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

The law provides that "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." Iowa Code § 96.6(2)

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. On the 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 prescribed by Iowa Code Section 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the separation from employment. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979).

The fact that a decision can't be made regarding the claimant's receipt of regular unemployment insurance benefits does not prevent a decision on the claimant's eligibility for extra business-closing benefits. But this only involves whether the claimant was laid off, discharged, or voluntarily quit and does not require any determination as to whether the claimant committed misconduct or had good cause for quitting.

Iowa unemployment insurance law provides additional benefits for claimants laid off due to their employer going out of business at the factory, establishment, or other premises at which they were last employed. Iowa Code § 96.3-5.

The findings of fact show how I resolved the disputed factual issues in this case by carefully assessing of the credibility of the witnesses and reliability of the evidence and by applying the proper standard and burden of proof. This is made more difficult by the dubiousness of testimony by both the claimant and Holaday. For example, claimant's testimony that she did not know what Exede was back in August and she thought the alien-figure cardboard cutout displays in her office were a joke is not believable. Likewise, Holaday's testimony that he told the claimant that she was discharged on August 6 but paid her through August 15 because he

was nice is not credible. But the bottom line is that I do not believe the claimant was laid off because the office in Burlington closed. Instead, I am convinced that Holaday's belief (whether it was right or wrong makes no difference) that the claimant was involved in Efrain Gutierrez's promotion of Exede led him to terminate her employment, and since she was the only one in the office, he decided to close it.

The claimant, therefore, is entitled to regular benefits but not additional business-closing benefits.

DECISION:

The unemployment insurance decision dated September 25, 2014, reference 01, is modified with no change in the outcome. The claimant is not entitled to have her claim redetermined as a layoff due to a business closing. The claimant is qualified to receive regular unemployment insurance benefits, if she is otherwise eligible, because the employer's failed to file a protest.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

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