

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ROBERT E HARDING**  
Claimant

**APPEAL NO. 06A-UI-11028-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CARGILL MEAT SOLUTIONS CORP**  
Employer

**OC: 04/02/06 R: 03**  
**Claimant: Respondent (2)**

Section 96.5-1 – Voluntary Quit  
Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated November 1, 2006, reference 05, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on November 30, 2006. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Erica Waldvogel participated in the hearing on behalf of the employer with a witness, Brandi Henry. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show that the claimant worked for Supreme Staffing after his employment with the employer ended and that he was paid \$637.00 for that work as of the time he applied for unemployment insurance benefits on April 2, 2006. If a party objects to taking official notice of these facts, the objection must be submitted in writing no later than seven days after the date of this decision.

**ISSUES:**

Did the employer file a timely protest of the claim?

Did the claimant voluntarily quit employment without good cause attributable to the employer?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a production worker from May 18, 2005, to January 25, 2006. The claimant voluntarily quit his job for personal reasons not caused by the employer.

The claimant filed a new claim for unemployment insurance benefits with an effective date of April 2, 2006. He filed for and received a total of \$4,729.28 in benefits through August 5, 2006.

A notice of claim was mailed to the employer's address of record on April 7, 2006, 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 April 17, 2006. The employer's protest was mailed on April 11, 2006, which was before the time period for protesting had expired. Due

to some error by the United Postal Service or the Agency, the protest was not received by the Agency.

The employer filed a timely appeal from the quarterly statement of benefit charges and sent a copy of the protest letter that was mailed on April 11, 2006.

### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code section 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.

The employer failed to file a protest within the time period prescribed by Iowa Code section 96.6-2. However, the failure to file a timely protest was due an Agency error or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing the protest. The protest is deemed timely.

The issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

Iowa Code section 96.5-1 provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department.

The evidence establishes the claimant voluntarily quit employment but did not have good cause attributable to the employer to leave his job.

The next issue in this case is whether the claimant was overpaid unemployment insurance benefits.

Iowa Code section 96.3-7 provides:

7. Recovery of overpayment of benefits. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

As a result of this decision, the claimant is disqualified from receiving unemployment insurance benefits and was overpaid \$4,729.28 in benefits. He had not earned wages of ten times his weekly benefit amount when he filed his claim.

**DECISION:**

The unemployment insurance decision dated November 1, 2006, reference 05, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The claimant was overpaid \$4,729.28 in unemployment insurance benefits, which must be repaid.

---

Steven A. Wise  
Administrative Law Judge

---

Decision Dated and Mailed

saw/pjs