

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JOSHUA L TRIPP**

Claimant

**APPEAL NO. 08A-UI-00046-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHAPMAN METERING LLC**

Employer

**OC: 12/02/07 R: 03  
Claimant: Respondent (4)**

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 December 24, 2007, reference 03, that concluded it had failed to file a timely protest regarding the claimant's separation of employment. A telephone hearing was held on January 16, 2008. Proper notice of the hearing was given to the parties. The claimant failed to participate in the hearing. Donald Bauerkemper participated on behalf of the employer. Exhibit A-1 was admitted into evidence at the hearing. Official notice is taken of the Agency's records regarding the claimant's unemployment insurance claim, which show the claimant has earned more than ten times his weekly benefit amount after he left employment with the employer. 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.

**ISSUE:**

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 for the employer from August 8, 2005, to mid-September 2006, when he requested and was granted a medical leave. He stated that he would return with a doctor slip, but he never returned to work. He voluntarily quit employment by not returning to work. Since his separation from the employer, he has earned more than ten times his weekly benefit amount.

A notice of claim was mailed to the employer's address of record on December 4, 2007, but was not received by the employer until December 18, 2007. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of December 14, 2007. The employer's protest was faxed on December 19, 2007, which was after the time period for protesting had expired. The reason the protest was filed late is because, for some reason, the employer did not received the notice until December 18, 2007.

## **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.

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. In addressing an 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).

The failure to file a timely protest was due to any 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.

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 division of job service.

The evidence established the claimant voluntarily quit employment without good cause attributable to the employer. The employer's account is exempt from charge for any benefits paid to the claimant.

## **DECISION:**

The unemployment insurance decision dated December 24, 2007, reference 03, is modified in favor of the employer. The employer filed a timely protest. The claimant is not disqualified from receiving unemployment insurance benefits based on this separation from employment. The employer's account is exempt from charge for any benefits paid to the claimant.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/kjw