

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON M BOHNENKAMP
Claimant

APPEAL NO: 08A-UI-00902-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOHRFELD ELECTRIC
Employer

**OC: 12/23/07 R: 04
Claimant: Respondent (4)**

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Mohrfeld Electric (employer) appealed a representative's January 24, 2008 decision (reference 02) that concluded Jason M. Bohnenkamp (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge because the employer did not file a timely protest. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 11, 2008. The claimant responded to the hearing notice, but was not available for the call. Michael Morhfeld, the owner, appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits during the week of December 23, 2007. On January 2, 2008, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until January 14, 2008, to respond to the notice.

The employer did not receive the notice of claim until Saturday, January 19, 2008. The employer has had previous problems getting mail in a timely manner. The employer completed and faxed the form on the next business day, January 22.

The claimant worked for the employer until July 27, 2007. The claimant informed the employer he was resigning because he had accepted another job that paid more money. Between July 28 and December 23, 2007, the claimant worked for another employer and earned more than ten times his weekly benefit amount.

REASONING AND CONCLUSIONS OF LAW:

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code section 96.6-2. Another portion of Iowa Code section 96.6-2 dealing with timeliness of an appeal from a representative's decision states 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 has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code section 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts indicate the employer did not receive the notice of claim until January 19, or after the initial ten-day deadline. The employer established a legal excuse for filing its protest on January 22, 2008. 871 IAC 24.35(2). Since the employer established a legal excuse for filing a late protest, the Appeals Section has legal jurisdiction to relieve the employer's account from charge. See Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979); and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

The next issue is whether the employer's account is subject to charge. An employer's account is relieved from charge when a claimant voluntarily quits employment without good cause attributable to the employer or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code section 96.7-2-a. Also, under Iowa Code section 96.5-1-a an employer's account is relieved from charge when a claimant quits for other employment. The facts establish the claimant voluntarily quit his employment to work for another employer. The employer's account will not be charged.

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. There is no legal consequence to the claimant as a result of this decision.

The claimant contacted the Appeals Section at 3:30 p.m. He indicated he worked the night shift and had just woken up. The claimant thought the hearing was on February 12 instead of February 11. Since the decision is not adverse to the claimant, he was not called back. Even if the claimant had requested that the hearing be reopened, his request would not have been granted because the hearing notice clearly states the hearing was scheduled for Monday, February 11.

DECISION:

The representative's January 24, 2008 decision (reference 02) is modified in the employer's favor. The employer established a legal excuse for filing a late protest. Since the claimant requalified before he established his claim for unemployment insurance benefits, he remains qualified to receive unemployment insurance benefits. The employer's account, however, will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs