

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRY L BRIGGS
Claimant

APPEAL NO: 11A-UI-15871-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE INC
Employer

OC: 11/20/11
Claimant: Respondent (4)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.5(1)a – Employer’s Liability

STATEMENT OF THE CASE:

The employer appealed a representative’s December 12, 2011 determination (reference 02) that held the claimant eligible to receive benefits and the employer’s account subject to charge because the employer had not filed a timely protest. The claimant participated at the hearing. Nancy Parli appeared on the employer’s behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge finds the employer filed a timely protest.

ISSUE:

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

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of November 20, 2011. On November 22, 2011, the Department mailed a notice of claim 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 informed the employer a protest had to be filed on or before December 2, 2011.

The employer faxed its protest to the Department on December 2, 2011. Shortly after December 2, the employer learned the Department has had problems with its fax line. As a result of technical problems with its fax line, Department personnel gave the employer three fax numbers to use when faxing in protests. The employer faxed the protest once on December 2, 2011, but the Department noted the fax was received on December 8, 2011.

The claimant worked for the employer January 21 through May 18, 2011. On May 12, the claimant gave the employer his resignation after he accepted another job. Between May 18 and November 20, 2011, the claimant worked 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 § 96.6(2). Another portion of Iowa Code § 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 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 § 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 faxed a protest on December 2, 2011. The employer did not keep a record of whether the fax was successfully transmitted, but the employer faxed the completed protest only once. The employer does not know why the Department indicated the fax was received on December 8. The employer learned the Department had problems receiving faxes and has since been given three fax numbers if one number does not successfully transmit a fax.

Based on the facts presented during the hearing, the employer filed a timely protest. Therefore, the Appeals Section has legal jurisdiction to relieve the employer's account from charge. See *Franklin v. IDES*, 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 attributable to the employer or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code § 96.7(2)a(2). Also, under Iowa Code § 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. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's December 12, 2011 determination (reference 02) is modified in the employer's favor. The employer filed a timely protest. Based on the reasons for his employment separation, as of November 20, 2011, the claimant remains qualified to receive benefits. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs