

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**EDGAR MONTALVO**  
Claimant

**APPEAL NO: 11A-UI-16601-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**JACOBSON STAFFING COMPANY LC**  
Employer

**OC: 12/04/11**  
**Claimant: Respondent (4)**

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

**PROCEDURAL STATEMENT OF THE CASE:**

The employer appealed a representative's December 23, 2011 determination (reference 01) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer did not file a timely protest. The claimant participated in the hearing. Elizabeth Jerome, the employer's account manager, and Dee Townsend, a claims analyst, appeared on the employer's behalf. Ninfa Redmond interpreted the hearing. Based on the evidence, the arguments of the parties, and the law, the administrative law judge concludes the employer's account will not be charged.

**ISSUES:**

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

Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The employer assigned the claimant to a job on October 8, 2010. The claimant worked for the employer until April 1, 2011. The claimant quit after the client the employer assigned the claimant to work for hired him as an employee.

The claimant established a claim for benefits during the week of December 4, 2011. On December 9, 2011, the Department mailed a notice to the employer's representative, Thomas & Thorngren, Inc. The notice informed the employer that the claimant had filed a claim for benefits, the maximum amount of money that could be charged against the employer's account, and that the employer had until December 19, 2011, to respond to the notice.

Thomas & Thorngren received the notice of claim on December 12, 2011. The notice of claim was completed. Thomas & Thorngren personnel tried to fax the completed form several times on December 19, 2011. The Department's fax number was busy and the completed protest form was not successfully transmitted on December 19, 2011. The completed form was not mailed. The protest form was faxed and successfully transmitted on December 20, 2011.

### **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 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 § 96.6(2) that 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 received the notice of claim on December 12, but did not attempt to fax a completed form until December 19. When the Department's fax number was busy and the fax could not be successfully transmitted on December 19, the employer's representative did not mail the protest so it could have a postmark of December 19, 2011.

It is a poor business practice to attempt faxing a protest on the last day of the deadline when it could have been faxed anytime from December 13 to 16. Also, the protest could have been timely if the completed protest had have been mailed on or before December 19. It is suggested that the employer review its practices for future protests. This case serves as a warning that if the employer does not change some business practices, future timely protest cases may not have the same result. For this case, the administrative law judge concludes that as a result of the Department's technical difficulties, a busy fax number, the employer established a legal excuse for filing the protest one day late. Therefore, the Appeals Section has legal jurisdiction to relieve the employer's account from 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. Based on the reasons for the employment separation, the claimant is qualified to receive benefits.

**DECISION:**

The representative's December 22, 2011 determination (reference 01) is modified in the employer's favor. The employer did not file a timely protest, but in this case established a legal excuse for filing a late protest. Since the claimant quit for other employment, the employer's account will not be charged. Based on the reasons for this employment separation, the claimant is qualified to receive benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/kjw