

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

JASON BERNING

Claimant

APPEAL NO: 14A-UI-01354-BT

**ADMINISTRATIVE LAW JUDGE
DECISION**

FLETCHER WOOD PRODUCTS INC

Employer

OC: 12/22/13

Claimant: Respondent (4)

Iowa Code § 96.6-2 – Timeliness of Protest

Iowa Code § 96.5-1-a – Voluntary Leaving - Other Employment

871 IAC 23.43(5) – Voluntary Quit – Other Employment

STATEMENT OF THE CASE:

Fletcher Wood Products, Inc. (employer) appealed an unemployment insurance decision dated January 27, 2014, reference 02, which held it failed to file a timely protest regarding the claimant's separation of employment on November 13, 2013, and no disqualification of unemployment insurance benefits was imposed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 27, 2013. The claimant participated in the hearing. The employer participated through Joseph Jackson, Vice-President and Clark Fletcher, President. Employer's Exhibit One was admitted into evidence. The timeliness of the protest issue was inadvertently left off the hearing notice. Both parties waived their right to a formal notice of the issue so it could be addressed in the hearing today.

ISSUE:

The issue is whether the employer's protest in this matter was timely, and if so, whether the claimant's voluntary separation from employment qualifies him to receive unemployment insurance benefits.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on December 26, 2013, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked or returned not later than ten days from the initial mailing date. The employer immediately faxed in the protest to three different fax numbers but it was not received by Iowa Workforce Development. The employer sent in another protest after it was discovered the original protest had not been received and the date of filing is listed as January 22, 2014. The administrative record has not been scanned into the computer system as of the date of the hearing so the administrative law judge has no independent basis for confirming the date the protest was filed.

The claimant was employed from April 23, 2012, through November 13, 2013, when he voluntarily quit. There were many reasons for the claimant's separation but most significant of

those reasons was that he was quitting for other employment with Gemberling Excavating. He began working for Gemberling Excavating and quarterly wages have been reported by this employer.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance decision is final unless a party appeals the decision within ten days after the decision was mailed to the party's last known address. Iowa Code § 96.6-2. The unemployment insurance rules provide that if the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action of the United States Postal Service, it would be considered timely. 871 IAC 24.35(2). Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973).

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979).

The employer faxed its protest in a timely manner the day after it received the notice of claim but the agency did not receive the fax transmission. Immediately upon receipt of information to that effect, the protest was re-filed. Therefore, the protest shall be accepted as timely.

The substantive issue to be determined in this case is whether the reasons for the claimant's separation from employment qualify him to receive unemployment insurance benefits. An individual who leaves employment voluntarily is disqualified from receiving job insurance benefits unless the quit was for good cause attributable to the employer. Iowa Code § 96.5(1). An exception is if the individual left in good faith for the sole purpose of accepting other employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. See 871 IAC 24.28(5). The claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the employer's account shall not be charged.

DECISION:

The employer's protest is timely. The unemployment insurance decision dated January 27, 2014, reference 02, is modified in favor of the appellant. The claimant voluntarily left his employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The employer's account shall not be charged.

Susan D. Ackerman
Administrative Law Judge

Decision Dated and Mailed

sda/pjs