

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MATTHEW J HUGHES**

Claimant

**APPEAL NO: 09A-UI-01349-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STYLECRAFT SERVICES LLC**

Employer

**OC: 12/21/08 R: 01  
Claimant: Respondent (4)**

Section 96.6-2 – Timeliness of Protest

Section 96.5-1 – Voluntary Leaving

**STATEMENT OF THE CASE:**

Stylecraft Services, L.L.C. (employer) appealed a representative's January 21, 2009 decision (reference 02) that concluded Matthew L. Hughes (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on February 16, 2009. The claimant participated in the hearing. Al Hicks appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. 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.

**ISSUES:**

Should the employer's protest be treated as timely? Was the claimant's voluntary quit disqualifying? Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The claimant established a claim for unemployment insurance benefits effective December 21, 2008 due to a layoff from a different employer. A notice of claim was mailed to the employer's last known address of record on December 23, 2008. The employer began a holiday shutdown on December 24, 2008 and did not reopen for business until January 5, 2009. The employer received the notice at that time but did not discover the notice in its mail until late on January 6, 2009. The notice contained a warning that a protest must be postmarked or received by the Agency by January 2, 2009. The protest was not filed until it was signed and faxed on January 7, 2009, which is after the date noticed on the notice of claim.

The claimant started working for the employer on October 28, 1996. He worked full time as an upholster on the first shift. The claimant's last day of work was November 7, 2008. He voluntarily quit as of that date because he had accepted other employment. He began working in that other employment on November 10, 2008, and continued until he was laid off from the new employment as of December 12, 2008.

## REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this matter is whether the employer filed a timely protest. 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 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 administrative law judge considers the reasoning and holding of the Beardslee court 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. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert an protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes that the employer's representative did not receive the notice of claim until January 5, 2009, already past the deadline for filing. The employer was not responsible for the delay in receiving the notice of claim. The employer did file its protest within ten days of actually receiving the notice. The administrative law judge, therefore, concludes that the protest should be treated as timely filed pursuant to Iowa Code § 96.6-2.

The substantive issue in this case is whether the claimant voluntarily quit, and if so, whether it was for good cause attributable to the employer.

Iowa Code § 96.5-1-a 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 department. But the individual shall not be disqualified if the department finds that:

a. The individual left employment in good faith for the sole purpose of accepting other or better employment, which the individual did accept, and the individual performed services in the new employment. Benefits relating to wage credits earned with the employer that the individual has left shall be charged to the unemployment compensation fund. This paragraph applies to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The claimant did voluntarily quit in order accept other employment. The claimant is not disqualified from receiving benefits as a result of this quit in the event of his later separation from his new employment, but the employer's account will not be charged.

**DECISION:**

The representative's January 21, 2009 decision (reference 02) is modified in favor of the appellant. The employer's protest is treated as timely. The claimant voluntarily left his employment as of November 7, 2008, but the quit was not disqualifying. The claimant is eligible for unemployment insurance benefits, provided he is otherwise eligible. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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