

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

ERNEST D RIGGLE

Claimant

PETROLEUM SERVICES COMPANY LLC

Employer

APPEAL NO: 11A-UI-16316-ST

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/27/11

Claimant: Respondent (1)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed a department decision dated December 15, 2011, reference 02, that held it failed to file a timely protest regarding claimant's employment separation on June 14, 2011, and benefits are allowed. A telephone hearing was held on January 24, 2012. The claimant participated. Scott Gloede, Retail Services Manager, participated for the employer. Employer Exhibit One was received as evidence.

ISSUE:

Whether the employer filed a timely protest.

FINDINGS OF FACT:

The administrative law judge having heard the testimony of the witnesses, and having considered the evidence in the record, finds: The claimant filed an unemployment claim effective November 27, 2011. A notice of claim was mailed to the employer address of record on December 12 with a protest due date of December 12. The employer representative who protested the claim was on vacation from December 5 to December 14, and did not appoint anyone else to handle such a matter. The protest was signed and faxed on December 14.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

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 administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code § which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that the employer failed to file a timely protest.

The failure to timely protest is due to being on vacation when someone else could handle it is not a good cause for the two-day delay.

DECISION:

The department decision dated December 15, 2011, reference 02, is affirmed. The employer failed to file a timely protest and the department decision on claimant's June 14, 2011 employment separation remains in force and effect. Benefits are allowed, provided the claimant is otherwise eligible.

Randy L. Stephenson
Administrative Law Judge

Decision Dated and Mailed

rls/pjs