

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT E PERSON

Claimant

APPEAL NO. 12A-UI-04238-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MEDICACOM COMMUNICATIONS

Employer

OC: 03-18-12

Claimant: Respondent (4)

Iowa Code § 96.6(2) – Timeliness of Protest

Iowa Code § 96.5(1)a – Voluntary Leaving/Other Employment

STATEMENT OF THE CASE:

The employer filed a timely appeal from the April 13, 2012, reference 02, decision that found the protest untimely and allowed benefits. After due notice was issued, a hearing was held on May 7, 2012. The claimant did participate. The employer did participate through Leanne Carlson, Administrator Human Resources.

ISSUES:

Did the employer file a timely notice of protest?

Did the claimant voluntary quit her employment without good cause attributable to the employer?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was employed as a commercial accountant full time beginning August 24, 2011 through December 1, 2011 when he voluntarily quit. The claimant voluntarily quit because he did not believe the job was a good fit for him. When he quit he had another job lined up with a new employer. Continued work was available for the claimant if he had not voluntarily quit his job. Agency wage records indicate claimant subsequently worked for and earned wages from his new employer.

The employer did not receive the notice of claim until April 2, 2012 after the time for filing the protest had expired. The protest was filed on April 2, 2012 the same day the employer received the notice of claim.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

Iowa Code section 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.

The employer did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. 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). The employer filed the protest on the day of receipt of the notice of claim. Therefore, the protest shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the claimant voluntarily left the employment to accept employment elsewhere.

Iowa Code section 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.

871 IAC 24.28(5) provides:

Voluntary quit requalifications and previously adjudicated voluntary quit issues.

- (5) The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment.

871 IAC 23.43(5) provides:

- (5) Sole purpose. The claimant shall be eligible for benefits even though the claimant voluntarily quit if the claimant left for the sole purpose of accepting an offer of other or better employment, which the claimant did accept, and from which the claimant is separated, before or after having started the new employment. No charge shall accrue to the account of the former voluntarily quit employer.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer separated before having started the new employment. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The April 13, 2012 (reference 02) decision is modified in favor of the appellant. The employer's protest was timely. The claimant voluntarily left his employment in order to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (account number 320421) shall not be charged.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/pjs