

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DERECK F HARWOOD
Claimant

APPEAL NO: 11A-UI-15872-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WORKSOURCE INC
Employer

OC: 11/06/11
Claimant: Respondent (4)

Iowa Code § 96.6(2) –Timeliness of Protest

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's December 12, 2011 determination (reference 02) that held the claimant eligible to receive benefits, but the employer's account was held subject to charge because the employer had not filed a timely protest. The claimant did not respond to the hearing notice or participate in the hearing. Nancy Parli, the branch manager, appeared on the employer's behalf. During the hearing, Employer Exhibit One was offered and admitted as evidence. Based on the evidence, the employer's arguments, and the law, the administrative law judge finds the employer filed a timely protest and the employer's account will not be charged.

ISSUES:

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

Is the employer's account exempt from charge?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of November 6, 2011. On November 23, 2011, the Department mailed a notice of claim to the employer. The notice informed the employer that the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until December 5, 2011, to respond and protest any charges to its account.

The employer completed the form and faxed its protest to the Department on December 5, 2011, at 5:21 p.m. The Department noted the employer's protest was received on December 8, 2011. (Employer Exhibit One.)

The claimant worked for the employer until September 13, 2010. The claimant's employment ended when he was hired by the client that the employer had assigned him to work. (Employer Exhibit One.) After September 13, 2010, but before November 6, 2011, the claimant worked for his new employer and earned more than ten times his weekly benefit amount or more than \$2,990.00.

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. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). An unemployment benefits contested case is commenced with the filing, by mail, facsimile or in person, a written appeal. Iowa Code § 17A-12(9), 871 IAC 26.4(1).

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) which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The administrative record indicates the employer filed its protest by faxing it on December 5, the last day to file a timely protest. The Department's assertion that the employer did not file a timely protest because the Department did not mark it as received until December 8, is without merit. The fax time stamp clearly shows the employer faxed the protest within the time frame allowed on or before December 5, 2011. The employer filed a timely protest. Therefore, the Appeals Section has legal jurisdiction to relieve the employer's account from charge. See *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979); and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

The next issue is whether the employer's account is subject to 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). When a claimant quits to accept another job, the claimant is not disqualified from receiving benefits and the employer's account is exempt from charge. The claimant voluntarily quit his employment to accept other employment. Therefore, the employer's account will not be charged.

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision.

DECISION:

The representative's December 12, 2011 determination (reference 02) is modified in the employer's favor. The claimant remains eligible to receive benefits as of November 6, 2011. The employer filed a timely protest. The employer's account will not be charged.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs