

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TREVOR A MONTGOMERY
Claimant

APPEAL NO. 12A-UI-00048-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BELL SERVICES LLC
Employer

OC: 11/20/11
Claimant: Respondent (2-R)

Section 96.5-1 – Voluntary Quit
Section 96.6-2 – Timeliness of Protest
Section 96.3-7 – Overpayment of Benefits

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated December 22, 2011, reference 02, that concluded the employer's protest was untimely. A telephone hearing was held on January 31, 2011. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Trisha Bell participated in the hearing on behalf of the employer with a witness, James Bell.

ISSUES:

Did the employer file a timely protest of the claim?
Did the claimant voluntarily quit employment without good cause attributable to the employer?
Was the claimant overpaid unemployment insurance benefits?

FINDINGS OF FACT:

The claimant worked full time for the employer as a construction worker in the employer's grain bin construction business from September 2010 to July 18, 2011. After working on July 18, 2011, the claimant failed to report to work the next morning. The crew was working out of town so someone checked at the hotel where they were staying but the claimant had left. There was continuing work for the claimant when he left. He did not leave work due to any good cause attributable to the employer.

The claimant filed for and received a total of \$1,232.00 in unemployment insurance benefits for the weeks between November 20, 2011, and January 7, 2012.

A notice of claim was mailed to the employer's address of record on November 28, 2011, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of December 8, 2011. The employer's protest was faxed on December 5, 2011, but due to some Agency error, the fax was not received. Around December 15, the employer contacted Iowa Workforce Development because

the employer had found out the claimant was drawing benefits. The employer immediately re-faxed the protest on December 15, 2011, and it was received.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits.

Iowa Code § 96.6-2 provides that protests must be filed within 10 days after a notice of claim is mailed to the employer. I conclude the protest was faxed in on time but was not received due to Agency error, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. The protest was timely.

The unemployment insurance law disqualifies claimants who voluntarily quit employment without good cause attributable to the employer. Iowa Code § 96.5-1. The evidence establishes the claimant voluntarily quit employment without good cause attributable to the employer.

The unemployment insurance law requires benefits to be recovered from a claimant who receives benefits and is later determined to be ineligible for benefits, even though the claimant acted in good faith and was not otherwise at fault. But the overpayment will not be recovered when an initial determination to award benefits is reversed on appeal on an issue regarding the claimant's employment separation if: (1) the benefits were not received due to any fraud or willful misrepresentation by the claimant and (2) the employer did not participate in the initial proceeding to award benefits. The employer will not be charged for benefits whether or not the overpayment is recovered. Iowa Code § 96.3-7. In this case, the claimant has received benefits but was ineligible for those benefits. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

DECISION:

The unemployment insurance decision dated December 22, 2011, reference 02, is reversed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible. The matter of deciding the amount of the overpayment and whether the overpayment should be recovered under Iowa Code § 96.3-7-b is remanded to the Agency.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/pjs