

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

MICHAEL L JONES
Claimant

APPEAL NO. 07A-UI-04561-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

LA CASA MARTINEZ TEX MEX INC
Employer

**OC: 02/18/07 R: 02
Claimant: Respondent (4)**

Section 96.5-1-a – Voluntary Quit to Accept Other Employment
Section 96.6-2 – Timeliness of Appeal and Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated April 9, 2007, reference 02, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on May 21, 2007. The parties were properly notified about the hearing. The claimant failed to participate in the hearing. Ben Villarreal participated in the hearing on behalf of the employer. Exhibits A-1 and A-2 were admitted into evidence at the hearing.

ISSUE:

Was the protest and appeal in this case filed timely?

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

FINDINGS OF FACT:

The claimant worked for the employer until January 26, 2007, when he quit to accept employment with North Iowa Area Community College. He worked for North Iowa Area Community College until February 14, 2007.

A Notice of Claim was mailed to the employer but to the wrong mailing address on March 20, 2007, and was received by the owner, Ben Villarreal, after it was forwarded on April 3, 2007. The Notice of Claim stated that any protest of the claim had to be faxed or postmarked by the due date of March 30, 2007. Villarreal's protest was mailed on April 3, 2007, which was after the time period for protesting had expired. Mr. Villarreal included the correct address with his protest.

An unemployment insurance decision was mailed to the same wrong address on April 9, 2007. The decision concluded it had failed to file a timely protest regarding the claimant's separation of employment and stated the decision was final unless a written appeal was postmarked or received by the Appeals Section by April 19, 2007.

Villarreal never received the decision. He filed a written appeal on May 3, 2007, on the same day that he learned from his local Workforce Development Center about the decision.

REASONING AND CONCLUSIONS OF LAW:

The first issue in this case is whether the employer filed a timely protest and appeal.

Iowa Code section 96.6-2 provides in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The failure to file a timely appeal was due to an Agency error, which under 871 IAC 24.35(2) excuse the delay in filing an appeal since the protest and appeal were sent to the wrong address. The appeal is deemed timely.

The next issue in this case is whether the claimant voluntarily quit employment without good cause attributable to the employer.

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.

The claimant left work to accept other employment and performed services in that new employment. The claimant is qualified to receive unemployment insurance benefits based on his separation from employment with the employer, provided he is otherwise eligible. Pursuant to the statute, the employer's account will not be charged for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated April 9, 2007, reference 02, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits, if he is

otherwise eligible. The employer's account will be exempt from charge for benefits paid to the claimant.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/css