

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TERRIUS T CAMPBELL
Claimant

APPEAL NO: 14A-UI-09054-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

MIDWEST PROVISIONS INC
Employer

OC: 08/03/14
Claimant: Respondent (4)

Iowa Code § 96.6(2) – Timely Protest
Iowa Code § 96.7(2)a – Employer Liability

PROCEDURAL STATEMENT OF THE CASE:

The employer appealed a representative's August 22, 2014 determination (reference 04) that held the claimant eligible to receive benefits and the employer's account subject to charge because the employer had not filed a timely appeal. The claimant did not participate at the September 22 hearing. Sherry Bathke appeared on the employer's behalf. Based on the evidence, the employer's arguments, and the law, the administrative law judge concludes the employer established a legal excuse for filing a late appeal and the employer's account will be not be charged for benefits paid to the claimant.

ISSUES:

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

Is the employer's account subject to or exempt from charge?

FINDINGS OF FACT:

The claimant worked for the employer from March 11 through August 9, 2013. He worked as a full time employee. The employer's attendance policy informs employees they cannot exceed five attendance points in a rolling six-month time frame. If an employee accumulates more than five attendance points, the employee's employment ends.

During his employment, the claimant was late for work and absent a number of times. On May 21, 2013, the claimant received a one-day suspension for accumulating 3.5 attendance points since March 2013. The claimant accumulated an additional 4.5 points from June 13 through August 12, 2013. On August 13, 2013, the employer discharged the claimant for violating the employer's attendance policy by accumulating eight points within five months.

After the claimant's employment ended on August 13, 2013, but before he established his claim for benefits he earned more than \$1840 in wages from other employers. The claimant established a claim for benefits during the week of August 3, 2014. A notice of claim was sent

to the employer on August 6. The notice of claim was sent to 3608 S. Southeastern Avenue instead of the employer's address at 3628. The employer had moved in July 2014 and timely informed the Department in July about the address change.

The notice of claim informed the employer a protest was due on or before August 18, 2014. The notice of claim also stated the maximum amount of money that could be charged to the employer's account.

The employer did not receive the notice of claim until August 18, 2014. The employer's president received the notice on August 19, completed the form and faxed the completed form to the Department on August 19, 2014.

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. 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 facts indicate the employer did not receive the notice of claim until August 18 or the last day to file a timely protest. Since the employer timely provided the Department with its current mailing address, the employer established a legal excuse for filing its protest one day late. 871 IAC 24.35(2). Therefore, the Appeals Bureau has legal jurisdiction to relieve the employer's account from charge.

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.

The facts establish the employer discharged the claimant for work-connected misconduct. The law presumes excessive unexcused absenteeism is an intentional disregard of the claimant's duty to an employer and amounts to work-connected misconduct except for illness or other reasonable grounds for which the employee was absent and has properly reported to the employer. 871 IAC 24.32(7). The claimant violated the employer's absenteeism policy. He committed work-connected misconduct. The employer's account will not be charged.

Since the claimant earned more than ten times his weekly benefit amount after August 9, 2013, but before he established his claim for benefits the week of July 6, 2014, he remains qualified to receive benefits as of July 6, 2014.

DECISION:

The representative's August 22, 2014 determination (reference 04) is modified in the employer's favor. The employer filed a late protest, but established a legal excuse for filing a late protest. The Appeals Bureau has legal jurisdiction to address the issue of whether the employer's account is relieved from charge. Based on the reasons for the claimant's August 9, 2013 employment separation, the employer's account will not be charged. The claimant remains qualified to receive benefits as of July 6, 2014, because he earned requalifying wages after he worked for the employer but before he established his claim for benefits.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/pjs