

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

DANIEL SIMS
Claimant

APPEAL NO. 09A-UI-08677-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

HEARTLAND EXPRESS INC OF IOWA
Employer

**Original Claim: 03/15/09
Claimant: Respondent (4)**

Section 96.5-1 – Voluntary Leaving
Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Heartland Express, Inc. of Iowa (employer)) appealed a representative's June 15, 2009 decision (reference 01) that concluded Daniel Sims (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 6, 2009. The claimant participated in the hearing. Lea Peters appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. The record was held open for submission and admittance of Claimant's Exhibit A on July 10. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Was the employer's protest timely?

Was there a disqualifying separation from employment either through a voluntary quit without good cause attributable to the employer or through a discharge for misconduct?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective March 15, 2009. A notice of claim was mailed to the employer's last known address of record on March 23, 2009. The employer received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by April 2, 2009. The protest was not noted as filed until the employer further protested a May 8, 2009 quarterly statement of charges, which was after the date noticed on the notice of claim. The employer's human resources representative, Ms. Peters, had personally completed the protest form on March 25, 2009 and had personally observed the protest be successfully processed through the employer's fax machine for transmission to the Agency Claims Section without any error.

The claimant started working for the employer on October 17, 2007. He worked full time as an over-the-road truck driver. His last day of work was August 29, 2008. He voluntarily quit as of that date due to his concerns that he needed to be earning more money. After the claimant's separation, the claimant entered into new employment with another employer in Georgia. During that employment, prior to establishing his claim for unemployment insurance benefits, the claimant earned wages in excess of \$3,610.00. His weekly benefit amount is \$361.00.

REASONING AND CONCLUSIONS OF LAW:

The first question is whether the employer's protest can be treated as timely. 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 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 administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code Section 96.6-2 that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes the employer's representative properly transmitted a completed protest into the within the time for filing a timely protest. The administrative law judge concludes that failure to have the protest received and noted as received within the time prescribed by the Iowa Employment Security Law was due to error, delay, or other action of the Agency pursuant to 871 IAC 24.35(2). The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2. Therefore, the administrative law judge has jurisdiction to make a determination with respect to the nature of the protest and appeal.

The employer asserted the claimant voluntarily quit as of August 29, 2008, and that it was without good cause attributable to the employer. However, this issue does not need to be resolved; because after the claimant worked for the employer but before he filed his claim for benefits effective March 15, 2009, he earned more than \$3,610.00 in wages from another employer. As a result, the reasons for his separation from the employer in August 2008 do not affect the claimant's eligibility to receive unemployment insurance benefits. 871 IAC 24.28(1). This also means the employer's account will not be charged for any benefits the claimant receives. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The representative's June 15, 2009 decision (reference 01) is modified in favor of the employer. The protest in this case was timely. The claimant has requalified for benefits since the August 29, 2008 separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/kjw