

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MICHAEL BOOTS**

Claimant

**APPEAL NO. 10A-UI-11740-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**A B DICK PRODUCTS OF SIOUXLAND INC**

Employer

**OC: 05/16/10**

**Claimant: Respondent (2-R)**

Section 96.6-2 – Timeliness of Protest

871 IAC 24.35(2) – Delay

Section 96.5-1 – Voluntary Quit

871 IAC 24.25(37) - Resignation

Section 95.5-1-g – Requalification for Benefits

Section 96.3-7 – Recovery of Overpayment

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated August 10, 2010, reference 03, that it failed to file a timely protest from the claimant's separation from employment on February 18, 2010, and benefits are allowed. A hearing was held on October 6, 2010. The claimant did not participate. Sue Barnes, Office Manager, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUES:**

Whether the protest is timely.

Whether claimant voluntarily quit with good cause attributable to the employer.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds that: The claimant filed an unemployment claim effective May 16, 2010. The department mailed a notice of claim to the employer's address of record on May 21, but the employer did not receive it. When the employer received a statement of charges on July 16 showing \$299.00 benefits charged to its account, it made an immediate department e-mail inquiry on July 19 with protest. A department representative responded on August 3 with a message and a copy of the notice of claim. The employer further protested claimant's claim on August 6 by submitting a copy of his resignation. The department responded by issuing a decision that the employer protest was untimely.

The claimant worked for the employer as a full-time sales representative from July 2009 to February 18, 2010. Without notice, the claimant submitted his resignation from employment on February 18 that the employer accepted.

The department record shows claimant was subsequently employed by Stream International (er#318766) from about February 22, 2010 to May 15. The department record shows the claimant's WBA is \$374.00, and he earned wages of \$1,767.00 for Stream International prior to filing his May 16 claim. The claimant has received benefits on his claim.

The claimant and the employer did not participate in this hearing.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Code section 96.6-2 provides in pertinent part:

2. Initial determination. A representative designated by the director shall promptly notify all interested parties to the claim of its filing, and the parties have ten days from the date of mailing the notice of the filing of the claim by ordinary mail to the last known address to protest payment of benefits to the claimant.

871 IAC 24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The department shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to department error or misinformation or delay or other action of the United States postal service or its successor, the department shall issue an appealable decision to the interested party.

The administrative law judge concludes that the employer did affect a timely protest to the claimant's claim as the delay was due to department error or mail delivery error by the US Postal Service.

The department never received the May 21 notice of claim. When the employer learned about it on July 16, it began the protest process with an e-mail inquiry of July 19 that it followed with a more formal protest on August 6 after the department provided sufficient information to do so.

Iowa Code section 96.5-1 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.

871 IAC 24.25(37) provides:

Voluntary quit without good cause. In general, a voluntary quit means discontinuing the employment because the employee no longer desires to remain in the relationship of an employee with the employer from whom the employee has separated. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to Iowa Code section 96.5. However, the claimant has the initial burden to produce evidence that the claimant is not disqualified for benefits in cases involving Iowa Code section 96.5, subsection (1), paragraphs "a" through "i," and subsection 10. The following reasons for a voluntary quit shall be presumed to be without good cause attributable to the employer:

(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of an intention to resign and the employer accepted such resignation. This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.

The administrative law judge further concludes the claimant voluntarily quit without good cause attributable to the employer when he resigned on February 18, 2010. The written resignation evidence offered by the employer confirms this reason for employment separation.

Iowa Code section 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

Iowa Code section 96.3-7, as amended in 2008, provides:

7. Recovery of overpayment of benefits.

a. If an individual receives benefits for which the individual is subsequently determined to be ineligible, even though the individual acts in good faith and is not otherwise at fault, the benefits shall be recovered. The department in its discretion may recover the

overpayment of benefits either by having a sum equal to the overpayment deducted from any future benefits payable to the individual or by having the individual pay to the department a sum equal to the overpayment.

b. (1) If the department determines that an overpayment has been made, the charge for the overpayment against the employer's account shall be removed and the account shall be credited with an amount equal to the overpayment from the unemployment compensation trust fund and this credit shall include both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5. However, provided the benefits were not received as the result of fraud or willful misrepresentation by the individual, benefits shall not be recovered from an individual if the employer did not participate in the initial determination to award benefits pursuant to section 96.6, subsection 2, and an overpayment occurred because of a subsequent reversal on appeal regarding the issue of the individual's separation from employment. The employer shall not be charged with the benefits.

(2) An accounting firm, agent, unemployment insurance accounting firm, or other entity that represents an employer in unemployment claim matters and demonstrates a continuous pattern of failing to participate in the initial determinations to award benefits, as determined and defined by rule by the department, shall be denied permission by the department to represent any employers in unemployment insurance matters. This subparagraph does not apply to attorneys or counselors admitted to practice in the courts of this state pursuant to section 602.10101.

The administrative law judge further concludes the department record does not show the claimant has earned sufficient wages to re-qualify for benefits (\$1,767.00) since his February 18, 2010 employment separation. Since the claimant has received benefits on his May 16, 2010 claim, this issue is remanded to claims for an overpayment determination.

#### **DECISION:**

The decision of the department representative dated August 10, 2010, reference 03, is reversed. The employer filed a timely protest. The claimant voluntarily quit without good cause on February 18, 2010, and benefits are denied until the claimant requalifies by working in and being paid wages for insured work equal to ten times his weekly benefit amount, provided the claimant is otherwise eligible. The overpayment issue is remanded.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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