

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

SCOTT A JOHNSTON
Claimant

APPEAL NO. 11A-UI-14211-HT

**ADMINISTRATIVE LAW JUDGE
DECISION**

AVENTURE STAFFING & PROFESSIONAL
Employer

OC: 07/04/10
Claimant: Respondent (5)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer, Aventure, filed an appeal from a decision dated September 13, 2011, reference 11. The decision found the employer's protest was not timely. After due notice was issued, a hearing was held by telephone conference call on November 30, 2011. The claimant participated on his own behalf. The employer participated by Human Resources Representative Kayla Neuhalfen. Exhibits One and Two were admitted into the record.

ISSUE:

The issue is whether the protest is timely and whether the claimant

FINDINGS OF FACT:

Claimant's notice of claim was mailed to employer's address of record on August 20, 2010, and received by employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. Employer did fax the protest to Iowa Workforce Development on September 2, 2010.

Scott Johnston was employed by Aventure from January 25 until September 1, 2010. He had one assignment from January 25 through April 23, 2010, at TPI. He was laid off from TPI when the work ended. Aventure did not have any assignments for the claimant within his skill classification after that time and he is considered to have been laid off for lack of work.

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.

The employer has established a fax was sent protesting Mr. Johnston's claim September 2, 2010. This was timely. But, the administrative law judge still questions why the employer did not respond to the statements of charges sent to it with Mr. Johnston's account number for the third and fourth quarters of 2010, and the first and third quarters of 2011. Nonetheless, the protest shall be accepted as timely.

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.

The claimant did not quit but finished his assignment as required. The employer had no further work for him and he was laid off for lack of work.

DECISION:

The representative's decision dated September 13, 2011, reference 11, is modified without effect. The employer's protest shall be accepted as timely. Scott Johnston is qualified for benefits, provided he is otherwise eligible.

Bonny G. Hendricksmeier
Administrative Law Judge

Decision Dated and Mailed

bgh/kjw