

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

SHERI L NEUBAUER
Claimant

VARNHAM INC
Employer

APPEAL 14A-UI-11103-LT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 09/28/14
Claimant: Respondent (4)**

Iowa Code § 96.5(1)a – Voluntary Quitting – Other Employment
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 23, 2014, (reference 03) decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was scheduled to be held by telephone conference call on November 14, 2014. Claimant did not respond to the hearing notice instruction and did not participate. Employer participated through manager, Janelle Moser. Department's Exhibit D-1 was received.

ISSUES:

Was the employer's protest timely?

Is the claimant's separation disqualifying?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record after the stated mailing date of October 26, 2014. The employer filed a protest on October 22, 2014, two days after the new protest deadline. The employer's protest was late because Moser was away from work due to a family emergency. She filed the protest the day she returned. The claimant quit to accept other employment with Char-Mac of Holstein, Inc.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 did not have an opportunity to protest the notice of claim because the notice was received while Moser was away from work for a family emergency and her subordinate bookkeeper did not believe she had the authority to open mail from IWD. The employer filed the protest the day she returned to work. Therefore, the protest shall be accepted as timely. However the administrative law judge suggests that, if possible, the employer designate someone to handle correspondence of a time sensitive nature in the manager's absence.

Iowa Code § 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 § 96.8, subsection 5.

Even though the separation was without good cause attributable to the employer and would, standing alone, disqualify the claimant from receiving benefits, the claimant did leave in order to accept other employment and did perform services for the subsequent employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The October 23, 2014, (reference 03) decision is modified in favor of the appellant. The employer has filed a timely protest, and the claimant quit to accept other employment. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer Varnham, Inc. shall not be charged.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/css