

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**AARON CONRAD**  
Claimant

**APPEAL NO. 08A-UI-05813-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**TYSON FRESH MEATS INC**  
Employer

**OC: 12/23/07 R: 03**  
**Claimant: Respondent (4)**

Section 96.5-1-a – Voluntary Quit to Accept Other Employment  
Section 96.6-2 – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer appealed an unemployment insurance decision dated June 13, 2008, reference 06, that concluded it had failed to file a timely protest regarding the claimant's separation of employment and no disqualification from receiving unemployment insurance benefits could be imposed. A telephone hearing was held on July 9, 2008. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Heather Barker participated on behalf of the employer. Exhibits A-1 and A-2 were admitted into evidence at the hearing.

**ISSUE:**

Did the employer file a timely protest of the claim?

Did the claimant voluntarily quit employment to accept another job?

**FINDINGS OF FACT:**

The claimant worked for the employer from April 9 to April 14, 2007. He voluntarily quit his employment to accept a job at Kwik Trip. He worked for Kwik Trip for several months.

A notice of claim was mailed to the employer's address of record on January 2, 2008, and was received by the employer within ten days. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of January 12, 2008. The employer's protest was mailed on January 7, 2008, which was before the time period for protesting had expired. Due to some error by the United States Postal Service or the Agency, the protest was not received.

On June 4, 2008, the employer filed a timely appeal from the quarterly statement of benefits charges issued in May 2008.

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

The first issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

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 filed a timely protest but it was not received due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) excuses the delay in filing the protest.

Iowa Code section 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 section 96.8, subsection 5.

The claimant left work to accept other employment and performed services in that new employment. The claimant is qualified to receive unemployment insurance benefits based on his separation from employment with the employer, provided he is otherwise eligible. Pursuant to the statute, the employer's account will not be charged for benefits paid to the claimant.

## **DECISION:**

The unemployment insurance decision dated June 13, 2008, reference 06, is modified in favor of the employer. The claimant is qualified to receive unemployment insurance benefits,

provided he is otherwise eligible. The employer's account will be exempt from charge for benefits paid to the claimant.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css