

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BILL J PELZER
Claimant

WILLIAM D WELLINGTON
Employer

APPEAL 16A-UI-00276-DL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/13/15
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 January 6, 2016, (reference 01) unemployment insurance decision that allowed benefits and found the protest untimely. After due notice was issued, a hearing was held by telephone conference call on January 26, 2016. Claimant participated. Employer participated through William Wellington. Department's Exhibit D-1 was received.

ISSUES:

Is the employer's protest timely?
Did claimant voluntarily quit to accept other employment?

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 on December 16, 2015, and was received on December 18, 2015. The employer filed its protest on December 23, 2015, at the Ames, Iowa post office but the Des Moines, Iowa post office did not process it until December 31, 2015. The employer has had similar difficulty with mail timeliness in the past and the post office personnel have told him it may be related to being lost or caught in processing machinery.

The claimant left work with Wellington on July 31, 2015, to accept other employment with ELS Landscaping in Cedarburg, Wisconsin on August 4, 2015. He is currently on reduced seasonal hours.

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether employer's protest is timely. The administrative law judge concludes it is.

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 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 Supreme 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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The reasoning and holding of the *Beardslee* court is considered controlling on the portion of Iowa Code § 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The employer received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline as he credibly deposited the protest at the Ames, Iowa post office on December 23, 2015, and it was not postmarked from the Des Moines, Iowa post office until December 31, 2015. Iowa Admin. Code r. 871-24.35(2).

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 section 96.8, subsection 5.

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

DECISION:

The January 6, 2016, (reference 01) unemployment insurance decision is modified in favor of the appellant. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs