

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**DOUGLAS A MASON**  
Claimant

**APPEAL NO: 10A-UI-00625-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA STATE UNIVERSITY**  
Employer

**OC: 09/27/09**  
**Claimant: Respondent (4)**

Section 96.6-2 – Timeliness of Protest  
Section 96.7-2-a – Employer Liability

**STATEMENT OF THE CASE:**

The employer appealed a representative's January 5, 2010 decision (reference 01) that concluded the claimant was eligible to receive benefits, and the employer's account was subject to charge because the employer had not filed a timely protest. A telephone hearing was held on February 24, 2010. The claimant participated in the hearing. Diana Broshar, Josh Mack and Greg Bolles appeared on the employer's behalf. Based on the evidence, the arguments of the parties, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer file a timely protest or establish a legal excuse for filing a late protest?

Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The claimant established a claim for benefits during the week of September 27, 2009. On December 17, 2009, the Department mailed a notice to the employer indicating the claimant had filed a claim for benefits and the maximum amount of money that could be charged against the employer's account. The notice of claim indicated the employer had until December 28, 2009, to respond to the notice or protest the claimant's receipt of benefits.

The employer received the notice of claim on December 18, 2009. The employer completed the form and attempted to fax it to the Department on December 28, 2009 around 4:00 p.m. The employer tried seven times to fax the form on December 28, 2009. The employer received information that none of these fax transmittal attempts succeeded. The transmittal report indicated the Department's fax was busy or there was no signal. The employer's mail had already been picked up when the employer attempted to fax the notice of claim.

On December 29, the employer again tried to fax the completed notice of claim. After several attempts the fax was ultimately successfully transmitted on December 29, 2009.

The claimant worked for the employer from May 14, 2007, through January 11, 2008. The claimant gave the employer more than a month's notice when he was resigned. The claimant indicated he was resigning so he could attend college full time. After the claimant resigned but before he filed his claim for benefits, he worked in Alaska for another employer and earned more than \$3,470.00 in wages. The claimant's maximum weekly benefit amount is \$347.00.

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

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 section 96.6-2. Another portion of Iowa Code section 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. IDJS*, 276 N.W.2d 373 (Iowa 1979).

The reasoning and holding of the *Beardslee* court is considered controlling on the portion of Iowa Code section 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. The facts indicate the employer received the notice of claim on December 18, 2009, or before the initial ten-day deadline. The employer established a legal excuse for filing its protest late on December 29, 2009, because of problems with the Department's fax machine. 871 IAC 24.35(2). While it is not the best business practice to fax a time sensitive document late in the afternoon on the last day to protest, the employer established the efforts the employer took to timely fax the protest to the Department. Since the employer established a legal excuse for filing its protest one day late, the Appeals Section has legal jurisdiction to relieve the employer's account from charge. See *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979); and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

The next issue is whether the employer's account is subject to charge. An employer's account is relieved from charge when a claimant voluntarily quits employment without good cause attributable to the employer. Iowa Code section 96.7-2-a. The law presumes a claimant voluntarily quits without good cause when he leaves employment to attend school. 871 IAC 24.25 (26). The facts establish the claimant voluntarily quit his employment without good cause attributable to the employer. Therefore, the employer's account will not be charged.

After the claimant worked for the employer but prior to establishing his claim for benefits, he earned ten times his weekly benefit amount from subsequent employment. As a result, there is no legal consequence to the claimant as a result of this decision. The claimant remains qualified to receive benefits.

**DECISION:**

The representative's January 5, 2010 decision (reference 01) is modified in the employer's favor. The employer established a legal excuse for filing a late protest. Therefore, the Appeals Section has jurisdiction to relieve the employer's account from charge. The employer's account will not be charged because the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. Since the claimant earned ten times his weekly benefit amount after he worked for the employer but before he established his claim for benefits, he remains qualified to receive benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs