

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**STEWART S HOPKINS**  
Claimant

**APPEAL NO: 09A-UI-17489-DWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BEST BUY STORES LP**  
Employer

**OC: 10/04/09**  
**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 November 9, 2009 decision (reference 01) that concluded the claimant was qualified 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 December 29, 2009. The claimant participated in the hearing. Tom Kuiper, a representative with TALX, appeared on the employer's behalf. Amanda Rivera and Jamey Fah testified 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 started working for the employer on July 28, 2008. The claimant worked part-time at night for the employer. The claimant also had a full time job. On July 30, 2009, Fah asked the claimant to move some laptops. The claimant believed that if he did this, he would not be able to get to work at his full time job. The claimant generally worked 5:00 to 11:00 p.m. for the employer. He then started his full-time job at 6:00 a.m. The claimant wanted to leave by 11:00 p.m. and did not think he would get Fah's job done by that time. The claimant talked to Fah about the job. Fah did not change the claimant's job assignment. Generally, employees worked until a job had been completed. The claimant was frustrated because he did not believe Fah worked with or supported his employees. The claimant left and told the employer he was done working.

After the claimant worked for the employer but before he established a claim he earned more than \$1,640.00 from another employer. The claimant established a claim for benefits during the week of October 4, 2009. His maximum weekly benefit amount is \$164.00.

On October 9, 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 October 19, 2009, to respond to the notice. The Department sent the notice of claim to the employer's corporate office in Minnesota. On October 20, 2008, the employer changed its mailing address. The Department did not send the notice of claim to the employer's current address of record.

Rivera, an unemployment insurance consultant with TALX received the hearing notice from the employer's corporate office on October 20, 2009. She immediately completed the notice of claim and mailed it that same day.

#### **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 did not receive the notice of claim until October 20, 2009, or after the initial ten-day deadline. Since the Department did not mail the notice of claim to the employer's correct address of record, the employer established a legal excuse for filing its protest one day late on October 20, 2009. 871 IAC 24.35(2). Therefore, 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 or the employer discharges the claimant for reasons amounting to work-connected misconduct. Iowa Code section 96.7-2-a. The facts establish the claimant voluntarily quit his employment for reasons that do not qualify him to receive benefits. 871 IAC 24.25(22) and (27). 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 November 9, 2009 decision (reference 01) is modified in the employer's favor. The employer established a legal excuse for filing a late protest. The Appeals Section has jurisdiction to determine whether the employer's account is subject to charge. The employer's account will not be charged because the claimant voluntarily quit his employment without good cause. The claimant is qualified to receive benefits as of October 4, 2009, because he requalified by earning more than ten times his weekly benefit amount from a subsequent employer after he quit working for the employer but before he established a claim for benefits.

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Debra L. Wise  
Administrative Law Judge

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Decision Dated and Mailed

dlw/pjs