

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS SECTION
1000 EAST GRAND—DES MOINES, IOWA 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI**

**JOSEPH D ANDERSON
13424 NW 44TH ST
POLK CITY IA 50226**

**MANPOWER INC OF D M
C/O TALX – UC EXPRESS
PO BOX 66864
ST LOUIS MO 63166-6864**

**MANPOWER INC OF D M
517 – 5TH AVE
DES MOINES IA 50309**

**Appeal Number: 04A-UI-12002-SWT
OC: 10/03/04 R: 01
Claimant: Respondent (4)**

This Decision Shall Become Final, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.5-1-a - Voluntary Quit for Other Employment
Section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer appealed an unemployment insurance decision dated October 26, 2004, reference 03, 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 December 2, 2004. Proper notice of the hearing was given to the parties. The claimant did not participate in the hearing. Rosalind McCain participated on behalf of the employer with a witness. Exhibit A-1 was admitted into evidence at the hearing.

FINDINGS OF FACT:

The employer is a staffing service that provides workers to client businesses on a temporary or indefinite basis. The claimant worked for the employer from December 17, 2003, to April 16,

2004, and then voluntarily quit employment to take another job, which he began on April 19, 2004.

A notice of claim was mailed to the employer on October 6, 2004, 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 October 18, 2004. The employer's protest was mailed on October 18, 2004. The protest was not received by the Agency until October 25, but was deposited with the United States Postal Service on October 18, 2004.

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979).

The employer's protest was filed by the deadline of October 18, 2004, and must be considered timely.

Iowa Code section 96.5-1-a provides that a claimant is not subject to disqualification and the employer's account is not subject to charge for benefit paid to the claimant if the claimant quits employment to take another job. That is the case here, and the claimant, therefore, is qualified to receive unemployment insurance benefits based on this separation from employment and the employer's account will not be charged for benefits paid to the claimant.

DECISION:

The unemployment insurance decision dated October 26, 2004, reference 03, is modified in favor of the employer. The employer filed a timely protest. The claimant is qualified to receive unemployment insurance benefits, if he is otherwise eligible. The employer's account is not subject to charge for benefits paid to the claimant.

saw/tjc