

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

AARON F WALSKE

Claimant

APPEAL NO: 13A-UI-08252-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

BUCCANEERS HOCKEY LLC

Employer

OC: 06/09/13

Claimant: Respondent (4)

Section 96.6-2 – Timeliness of Protest
Section 96.5-1 – Voluntary Leaving/Requalification

STATEMENT OF THE CASE:

Buccaneers Hockey L.L.C. (employer) appealed a representative's July 10, 2013 decision (reference 06) that concluded Aaron F. Walske (claimant) was qualified to receive unemployment insurance benefits and the employer's account might be charged because the employer's protest was not timely filed. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on September 25, 2013. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Renee Peled appeared on the employer's behalf. During the hearing, Exhibit A-1 was entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Should the employer's protest be treated as timely? Is the employer's account subject to charge?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective June 9, 2013. A notice of claim was mailed to the employer's last-known address of record on June 17, 2013. The employer received the notice at that address, but not until July 3. The notice contained a warning that a protest must be postmarked or received by the Agency by June 27, 2013. The protest was not filed until it was faxed on July 7, 2013, which is after the date noticed on the notice of claim.

The claimant last worked for the employer in about November 2012. When he established his claim for unemployment insurance benefits, his weekly benefit amount was determined to be \$315.00. Agency records show that after the claimant's separation from this employer, he earned insured wages from another employer exceeding \$3,150.00.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this matter is whether the employer filed a timely protest. 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. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the *Beardslee* court controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not have a reasonable opportunity to file a timely protest.

The record establishes that the employer's representative did not receive the notice of claim until July 3, 2013. The employer was not responsible for the delay in receiving the notice of claim, but the delay was due to department error or misinformation or delay or other action of the United States Postal Service.ⁱ The employer did file its protest within ten days of actually receiving the notice. The administrative law judge, therefore, concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2.

Iowa Code section 96.5-1-g 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:

g. The individual left work voluntarily without good cause attributable to the employer under circumstances which did or would disqualify the individual for benefits, except as provided in paragraph "a" of this subsection but, subsequent to the leaving, the individual worked in and was paid wages for insured work equal to ten times the individual's weekly benefit amount, provided the individual is otherwise eligible.

The administrative law judge further concludes from information contained in the administrative record that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The representative's July 10, 2013 decision (reference 06) is modified in favor of the appellant. The employer's protest is treated as timely. The claimant may have voluntarily left his employment without good cause attributable to the employer, but has requalified for benefits

since the separation. Benefits would be allowed, if the claimant was otherwise eligible. The account of the employer shall not be charged.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css

ⁱ **NOTE TO EMPLOYER:**

To change the address of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and
<http://www.youtube.com/watch?v= mpCM8FGQoY>