

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**MELANIE COOPER**  
Claimant

**APPEAL NO. 12A-UI-02069-ST**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**FAYETTE DENTAL CLINIC**  
**CHARLES LEE DDS**  
Employer

**OC: 01/15/12**  
**Claimant: Respondent (5)**

Section 96.6-2 – Timeliness of Protest  
871 IAC 24.35(2) – Protest Delay  
Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The employer appealed a department representative's decision dated February 20, 2012, reference 02, that it failed to file a timely protest from the claimant's separation from employment on December 31, 2011, and benefits are allowed. A hearing was held on March 19, 2012. The claimant participated. Charles Lee, DDS/Owner, participated for the employer. Employer Exhibit 1 was received as evidence.

**ISSUES:**

Whether the protest is timely.

Whether claimant was discharged for misconduct in connection with employment.

**FINDINGS OF FACT:**

The administrative law judge having considered the evidence in the record, finds that: The claimant filed an unemployment claim effective January 15, 2012. The department mailed a notice of claim to the known employer's address of record on January 24 with a protest due date of February 3. The previous dental practice was acquired by Dr. Lee effective December 31. He had attempted to establish an employer tax account with the department soon after the acquisition and he had communication(s) with department representatives.

The previous dental practice owner forwarded claimant's notice of claim to Dr. Lee. The address is 143 not 148 S Main Street. He received it on February 4 and faxed a protest to the department on February 8.

Claimant had worked for the prior owner as a dental assistant at more than \$20.00 an hour for about 28 hours of work. Dr. Lee met with claimant on December 16 about continuing employment. He learned she was moving to Monticello but she was willing to work for him on

any of three consecutive days for about 26 hours a week. She had a place to stay in Fayette to maintain employment and limit her commute.

Claimant worked 13-hours for 3-days up to January 6, 2012 and was paid \$15.00 an hour though she had not agreed to this rate. She worked an additional 15 and one-half hours for January 23, 24 and 25 for which she has not been paid. The employer cancelled a meeting with claimant scheduled for February 10 to discuss future employment, and it has failed to make itself available for work discussions/offers, thereafter.

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

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that 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 that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes the employer filed a timely protest to the claimant's claim, as the delay was due to department error. The department tax department failed to note the change of employer ownership and address that caused the notice of claim to be mailed to the prior owner, which led to a mail fore-warding delay to the new owner.

Iowa Code section 96.5-2-a provides:

An individual shall be disqualified for benefits:

2. Discharge for misconduct. If the department finds that the individual has been discharged for misconduct in connection with the individual's employment:
  - a. The individual shall be disqualified for benefits until the individual has worked in and has been 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 the employer discharged claimant for no act of misconduct effective January 6, 2012. Claimant's unemployment was the result of the new

employer owner failing to schedule her for work. Claimant's employment separation is unrelated to the sale of the dental practice and her move to Monticello.

Although claimant performed work after January 6, this is the last date she was actually paid. It is believable claimant worked 15 additional hours for which she has not been paid, and the employer has failed to set a work schedule that constitutes a discharge for no disqualifiable reason. Although claimant moved to Monticello, her January 2012 work for the employer and willingness to work further demonstrates a desire for continuing employment that is not consistent with a person who has quit employment.

**DECISION:**

The decision of the department representative dated February 20, 2012, reference 02, is modified. The employer affected a timely protest. The employer discharged claimant for no disqualifiable reason on January 6, 2012. Benefits are allowed, provided the claimant is otherwise eligible.

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Randy L. Stephenson  
Administrative Law Judge

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Decision Dated and Mailed

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