

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANTHONY MORRILL
Claimant

FALBOS FOREVER LLC
Employer

APPEAL 18A-UI-08876-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/06/17
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timely Protest
Iowa Code § 96.7(2)a(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

The employer filed an appeal from the Statement of Charges dated August 9, 2018, for the second quarter of 2018. A hearing was scheduled and held on September 10, 2018, pursuant to due notice. Claimant did not participate. Employer participated through witness Lindy Ahrens. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the employer file a timely protest?
Have the conditions for file an appeal to the Statement of Charges been met?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Claimant filed his initial claim for benefits effective August 6, 2017. A Notice of Claim was mailed to the employer Falbo Bros Pizzeria (employer account number 272435) at its address of record at 457 S Gilbert St, Iowa City, IA 52240-4918. The employer did not return the Statement of Protest prior to the August 21, 2017 due date.

Claimant's administrative records establish that he was paid wages by Falbo Bros Pizzeria (employer account number 272435) during the second, third, and fourth quarter of 2016 and the first quarter of 2017. The administrative records establish that the debt for Falbo Bros Pizzeria transferred to BMG Pizza LLC (employer account number 539325). See EMP1.

A decision dated June 27, 2018 was issued by the Unemployment Insurance Tax Bureau finding that Falbos Forever, LLC acquired all the business of BMG Pizza LLC, effective May 3, 2018. The decision further finds that Falbos Forever LLC is liable for any debt this employer may owe to Iowa Workforce Development. No appeal was filed from the June 27, 2018 decision.

Falbos Forever LLC was assessed the debt of BMG Pizza LLC (and previous debt of Falbo Bros Pizzeria) on the Statement of Charges mailed August 9, 2018, for the second quarter of

2018. Falbos Forever LLC then filed its appeal of that Statement of Charges on August 22, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not file a timely protest to the notice of claim and as such, the conditions for appealing the statement of charges have not been met.

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. Iowa Dep't of Job Serv.*, 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.

An exception exists to filing a response within ten days if there is credible evidence that the delay was due to agency error, misinformation or delay, or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). If the employer has failed to file a timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make any determination with respect to the nature of the claimant's separation from employment. See *Beardslee*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979). When an employer's protest of an initial claim for benefits is filed and an issue could result in a decision detrimental to an interested party, the rules require that the interested party shall be afforded the opportunity to present facts and evidence which may include an informational fact-finding interview scheduled by the department. Iowa Admin. Code r. 871-24.9(2). A decision is then issued by the department regarding the issue. *Id.* Regular proceeding by the agency would have meant the protest would be retained, a protest docketed, a fact-finding interview scheduled and held, and a decision issued.

If a protest had been received prior to the due date, the regular process should have been triggered, but it was not. "The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular". Iowa Code § 622.56; *accord City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982). Thus, there is a presumption, as the agency has no record of receiving a protest prior to the due date, that none was sent. This is not an absolute presumption, but rather it is one that may be overcome with sufficiently probative evidence.

However, the employer did not present any credible evidence that Falbo Bros Pizzeria failed to receive the notice of claim mailed to it on August 9, 2017. Because Falbo Bros Pizzeria failed to complete and return the statement of protest to Iowa Workforce Development prior to the August 21, 2017 due date, it has failed to file a timely protest. If an employer fails to file a timely protest, Iowa Code § 96.7(2)a(6) is not applicable, given the fact that the statement of charges

was not the first notification the employer received regarding the allowance of benefits to the claimant.

Iowa Code section 96.7(2)a(6) provides:

2. Contribution rates based on benefit experience.

a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security number, and the amount of benefits paid to the individual. *An employer which has not been notified as provided in section 96.6, subsection 2, of the allowance of benefits to an individual, may within thirty days after the date of mailing of the notification appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The appeal shall be referred to an administrative law judge for hearing and the employer and the individual shall receive notice of the time and place of the hearing.*

(emphasis added).

BMG Pizza LLC became liable for the debt of Falbo Bros Pizzeria. Pursuant to the Unemployment Insurance Tax Bureau decision issued June 27, 2018, Falbos Forever LLC then acquired all the business of BMG Pizza LLC and became liable for any debt BMG Pizza LLC may owe Iowa Workforce Development. An employer may only appeal the statement of charges for a hearing to determine the eligibility of the individual to receive benefits if it was not previously notified pursuant to Iowa Code § 96.6(2) of the allowance of benefits.

In this case, because Falbo Bros Pizzeria was previously notified of the claim on August 9, 2017 and it failed to promptly protest, Falbo Bros Pizzeria became liable for any debt owed. The debt owed was then transferred to BMG Pizza LLC. Then, Falbos Forever LLC became liable for the debt of BMG Pizza LLC pursuant to the Tax Bureau decision. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met because Falbo Bros Pizzeria failed to file a timely protest.

DECISION:

The employer failed to file a timely protest. The conditions for appealing the statement of charges have not been met. The August 9, 2018 statement of charges for the second quarter of 2018 is affirmed.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

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