

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RAMON ROBLES
Claimant

APPEAL 17A-UI-11593-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LESSARD CONTRACTING INC
Employer

**OC: 02/05/17
Claimant: Respondent (1R)**

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

STATEMENT OF THE CASE:

Lessard Contracting, Inc. (employer) filed an appeal from the Statement of Charges dated November 9, 2017, for the third quarter of 2017. A hearing was scheduled for December 4, 2017, pursuant to due notice. On the date of the hearing, the employer's witness requested in writing to reschedule the hearing due to a family medical issue. The request was granted and both parties agreed to reschedule the hearing for December 20, 2017 at 10:00 a.m. New hearing notices were mailed the following day. Ramon Robles (claimant) registered for the hearing but did not answer his phone when called and did not participate. The employer participated through Office Manager DeWayne Juelfs. Department's Exhibits D1 and D2 were received.

ISSUES:

Was the employer's protest timely?

Was the employer's appeal from the statement of charges timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to the employer's address of record on February 8, 2017. The employer received the notice but did not protest as the claimant was on a seasonal layoff. The employer also received but did not appeal the Statement of Charges for the first quarter of 2017 as it did not object to the claimant receiving benefits due to the seasonal layoff.

In April 2017, the employer recalled its employees to work. The claimant informed the employer at that time that he was unable to work due to an injury he received during the layoff. The employer did not notify the agency that the claimant had refused an offer of work. The employer received a Statement of Charges mailed August 9, 2017 for the second quarter of 2017. The employer notified Iowa Workforce Development (IWD) at that time that it objected. It received a response that it did not timely file its objection. The administrative record shows no appeal was received by the Appeals Bureau or scheduled for a hearing with an administrative law judge.

On August 29, 2017, the claimant submitted a doctor's note to the employer which stated that he was under medical care and unable to work. He would be released to work before his next medical appointment on October 3, 2017.

On November 9, 2017, a Statement of Charges for the third quarter of 2017 was mailed to the employer showing that it was being charged for the claimant's benefits. The employer appealed the Statement of Charges on November 13, 2017. The issues of whether the claimant refused a suitable offer of work and if he was able to and available for work have not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely appeal to the Statement of Charges.

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.

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.

The employer filed its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because it attempted to appeal the first notice it had the claimant was still receiving benefits following the time he declined to return to work. It appears it was agency error that no appeal was set up and the employer's appeal to the current Statement of Charges within thirty days will be accepted as timely. The issues of whether the claimant refused a suitable offer of work and if he was able to and available for work while receiving benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The November 9, 2017, Statement of Charges for the third quarter of 2017 is affirmed pending the outcome of the issues that have been remanded to the Benefits Bureau. The employer has filed a timely appeal from that Statement of Charges.

REMAND:

The issues of whether the claimant refused a suitable offer of work and if he was able to and available for work while receiving benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. Both parties shall receive notice of any fact-finding interviews or decisions made by the Benefits Bureau regarding the above issues.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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