

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LARRY G SLOTA
Claimant

INTERCEPT INDUSTRIES LTD
Employer

APPEAL 17A-UI-12342-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/02/17
Claimant: RESPONDENT (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal to the November 9, 2017, third quarter statement of charges. The parties were properly notified about the hearing. A telephone hearing was held on December 20, 2017. Claimant did not participate. Employer participated through Tyson Robbins, Manager. Official notice was taken of agency records.

ISSUE:

Did the employer file a timely appeal to the November 9, 2017 third quarter statement of charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A notice of claim was mailed to the employer on September 8, 2016 putting them on notice that a claim had been filed by the claimant and their account could be subject to charges. The employer responded the notice of protest on September 15, 2016 by indicating that the claimant's hours had been reduced by the employer. The agency issued a decision on September 19, 2016 that allowed claimant benefits. The employer never appealed that decision. The claimant collected unemployment insurance benefits from September 2016 through July 2017.

A statement of charges was mailed to the employer on February 9, 2017 putting them on notice that the claimant had collected unemployment insurance benefits for the fourth quarter of 2016. The employer did not appeal that statement of charges.

On May 9, 2017, a statement of charges was mailed to the employer for the first quarter of 2017 putting them on notice that the claimant had collected unemployment insurance benefits during that quarter. The employer did not appeal that statement of charges.

On August 9, 2017, a statement of charges was mailed to the employer for the second quarter of 2017 putting them on notice that the claimant had collected unemployment insurance benefits during that quarter. The employer did not appeal that statement of charges.

All of the notices were sent to the corporate office location. The employer had designated the corporate office as the location where their notifications should be sent. The employer simply did not act on the decision sent to them awarding benefit or the three previous statements of charges sent to them before the one at issue in this case.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer did not file a timely appeal to the decision awarding benefits, or to the three prior statements of charges; thus, they have not met the requirements to be able to file an appeal to the third quarter 2017 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states that 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 first indication the employer gave the agency that they were appealing the claimant's benefits was their appeal of the third quarter 2017 statement of charges on November 30, 2017, over one year after they had been sent an adverse decision that they chose not to appeal. The employer then chose not to appeal three subsequent statement of charges that all put them on notice that the claimant was collecting benefits and their account had been charged. The failure to file a timely appeal to the decision issued on September 19, 2016 and the subsequent statements of charges was not due to any Agency error or misinformation or delay or other action on the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest.

The result in this case is reinforced by Iowa Code § 96.7(2)a(6), which states as follows:

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.

Three statements of charges were mailed to the employer in February, May and August 2017 respectively. The employer never appealed any of those three statements of charges. An employer is only allowed to appeal to the department for a hearing to determine the eligibility of the individual to receive benefits if they were not previously notified pursuant to Iowa Code § 96.6(2) of the notice of claim. In this case, the employer did not file an appeal to the decision awarding benefits. Nor did they address the issue in February 2017, May 2017, or August 2017 when they were mailed statement of charges listing the claimant as collecting benefits. As such, the conditions for appealing the statement of charges for third quarter of 2017 under Iowa Code § 96.7(2)a(6) have not been met.

DECISION:

The employer has failed to file a timely appeal to the decision issued in September 2016 and to three prior statements of charges thus they have not met the conditions for appealing the statement of charges issued on November 9, 2017 under Iowa Code § 96.7(2)a(6). The charges for the third quarter of 2017 shall remain in full force and effect.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs