

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT M HAZELBAKER
Claimant

TWELFTH MAN LLC
Employer

APPEAL 19A-UI-01287-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/02/18
Claimant: Respondent (4)**

Iowa Code § 96.6(2) – Timeliness of Employer 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 February 8, 2019, which listed charge information for the fourth quarter of 2018. Due notice was issued and a hearing was held on March 4, 2019. Claimant participated personally. Employer participated through witness Rob Taylor. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the employer file a timely protest?
Is the employer's appeal from the statement of charges timely?
Is the statement of charges correct?

FINDINGS OF FACT:

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

Claimant's original claim date is December 2, 2018. The employer's protest was accepted as timely and an unemployment insurance decision was issued on February 11, 2019 (reference 03) which held that the claimant was eligible for benefits and that the employer would not be charged for benefits paid. The administrative records for the claimant establish that no appeal was filed from this decision. The first notice that the employer received that it would be charged for benefits paid to claimant was the statement of charges that was mailed to the employer on February 8, 2019. The employer filed an appeal to the statement of charges on February 12, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did file a timely appeal to the statement of charges.

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).

An employer is only allowed to appeal the statement of charges 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) that the employer would be charged for benefits paid. In this case, the employer was not previously notified that it would be charged for benefits paid because the February 11, 2019 (reference 03) decision held that the claimant was eligible for benefits and that the employer would not be charged for benefits paid. Further, the employer has filed an appeal to the statement of charges within thirty days of the date of mailing of the statement of charges.

As such, the employer's appeal to the statement of charges dated February 8, 2019 is timely. The statement of charges for the fourth quarter of 2018 is inconsistent with previous agency action regarding this claimant.

DECISION:

The conditions for appealing the statement of charges dated February 8, 2019 for the fourth quarter of 2018 have been met. The February 8, 2019 statement of charges for the fourth quarter of 2018 is modified in favor of the appellant due to being inconsistent with previous agency action regarding this claimant.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs