

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**WILBERT L PEARSALL**  
Claimant

**DUBUQUE RESCUE MISSION**  
Employer

**APPEAL 19A-UI-09057-AW-T**  
**ADMINISTRATIVE LAW JUDGE**  
**DECISION**

**OC: 07/21/19**  
**Claimant: Respondent (2R)**

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

**STATEMENT OF THE CASE:**

Employer filed an appeal from the Statement of Charges dated November 8, 2019 for the third quarter of 2019. The parties were properly notified of the hearing. A telephone hearing was held on December 6, 2019, at 9:00 a.m. Claimant participated. Employer participated through Richard Mihm, Executive Director. No exhibits were admitted. Official notice was taken of the administrative record.

**ISSUE:**

Whether employer's protest is timely.  
Whether employer's appeal from the statement of charges is timely.

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits effective July 21, 2019. A Notice of Claim was mailed to employer at the correct address on July 29, 2019. Employer received the notice of claim within two to three days of the date of mailing and completed and returned the protest within two days of receipt. Employer indicated on its protest that claimant was still employed with Dubuque Rescue Mission. Employer submitted its protest to Iowa Workforce Development via mail prior to the due date of August 8, 2019. Iowa Workforce Development did not receive employer's protest.

Employer received the Statement of Charges mailed November 8, 2019 for the third quarter of 2019, which included a charge for claimant. Employer filed an appeal of the Statement of Charges online on November 12, 2019. Claimant did not appear on any of employer's previous statement of charges. Employer is protesting the claim on the basis that claimant began working for Dubuque Rescue Mission on September 18, 2017 and has been continuously employed for the same hours since his hire. There has been no initial investigation and determination regarding claimant's partial unemployment and Dubuque Rescue Mission's chargeability. The questions of whether claimant is partially unemployed and whether employer

should be charged will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes employer's protest is timely and employer's appeal from the statement of charges is timely.

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 Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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.

Iowa Admin. Code r. 871-26.4 provides, in relevant part:

2. An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp after the decision was mailed to the party at its last-known address and shall state the following:
  - a. The name, address and social security number of the claimant;
  - b. A reference to the decision from which appeal is taken; and,
  - c. The grounds upon which the appeal is based.
3. Notwithstanding the provisions of subrule 26.4(2), a contributory employer, which has not previously received a notice of the filing of a valid claim for

benefits, may appeal an individual's eligibility to receive benefits within 30 days from the mailing date of the quarterly statement of benefit charges.

4. Also notwithstanding the provisions of subrule 26.4(2), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 15 days of the mailing date of the quarterly billing of benefit charges.

Employer submitted its protest via mail prior to the due date. The delay in submission was due to error by the United States Postal Service. Employer filed its appeal of the Statement of Charges mailed November 8, 2019 for the third quarter of 2019 prior to the due date. Therefore, employer timely protested the notice of claim and timely appealed the statement of charges.

**DECISION:**

Employer filed a timely protest of the Notice of Claim and a timely appeal of the Statement of Charges.

**REMAND:**

The issues of whether claimant is partially unemployed and whether Dubuque Rescue Mission (Employer ID: 284192-000) should be charged are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Adrienne C. Williamson  
Administrative Law Judge  
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Decision Dated and Mailed

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