

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRISTOPHER S GONNERMAN
Claimant

KING CONTRACTING LLC
Employer

APPEAL 18A-UI-09146-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/24/17
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the July 16, 2018, Statement of Charges for the first quarter of 2018 that included charges for claimant's unemployment insurance benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 20, 2018. Claimant participated. Employer participated through office secretary Meghann King. Employer's Exhibit 1 was received.

ISSUES:

Did the employer timely appeal the Statement of Charges?
Is the Statement of Charges correct?
Is the employer's protest timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant last worked for employer on August 17, 2017. Claimant reopened his claim for unemployment insurance benefits at that time and on September 14, 2017, a reference 01 decision was issued allowing claimant benefits for the two weeks ending September 2, 2017, but disqualifying him based on a resignation thereafter.

Claimant then began working for a new employer and earned ten times his weekly benefit amount.

Claimant was temporarily laid off by his new employer for the winter and filed a new claim for unemployment insurance benefits. The new claim year had an effective date of December 24, 2017. It appears Iowa Workforce Development did not send a new Notice of Claim to employer at that time.

Employer's first notice of the new claim was the July 16, 2018, Statement of Charges for the first quarter of 2018 that included charges for claimant's benefits in the new claim year. Employer received the Statement within a few days of it being mailed on July 16, 2018, but was busy at

the time and did not carefully review it. On August 9, 2018, a Statement of Charges was sent to employer for the second quarter of 2018. It also included charges for claimant. Employer did a careful review of both Statements and filed an appeal on August 29, 2018.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes the employer's first notice of claim was the July 16, 2018, Statement of Charges. The employer did not file its appeal within 30 days of receipt of the Statement of Charges even though it received it within the appeal period. The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The appeal of the July 16, 2018, Statement of Charges and any Statement of Charges sent subsequently during this claim year cannot be accepted as timely. Because the appeal is untimely, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979). Therefore, the Statement of Charges must be affirmed.

DECISION:

The July 16, 2018, Statement of Charges is affirmed. The employer did not file a timely appeal from July 16, 2018, Statement of Charges. The charges shall remain in full force and effect. Benefits are allowed.

Christine A. Louis
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Decision Dated and Mailed

cal/scn