

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

TIM D KEHOE

Claimant

APPEAL NO: 09A-UI-15125-DT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CONTINENTAL TERRACE APARTMENTS

Employer

OC: 02/03/08

Claimant: Respondent (4/R)

Section 96.6-2 – Timeliness of Protest

Section 96.7-2a(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

Continental Terrace Apartments, L.L.C. (employer) appealed charges against its account due to benefits paid to Tim D. Kehoe (claimant). After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on November 12, 2009. This appeal was consolidated for hearing with a duplicate appeal, 09A-UI-15123-DT. The claimant failed to respond to the hearing notice and provide a telephone number at which he could be reached for the hearing and did not participate in the hearing. Tim Elliott appeared on the employer's behalf and presented testimony from one other witness, Megan Ironside. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Was the employer's protest timely?

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective February 3, 2008. A notice of claim was mailed to the employer's last-known address of record on February 13, 2008. The employer did not receive the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by February 25, 2008. On May 9, 2008 a quarterly statement of charges was sent to the employer's last known address of record showing \$1,866.00 of benefits were paid to the claimant in the first quarter 2008. The employer did not receive the statement of charges. On August 8, 2008 a quarterly statement of charges was sent to the employer's last-known address of record showing \$4,043.00 was paid to the claimant in the second quarter 2008. The employer did not receive the statement of charges. On September 30, 2008 a quarterly statement of charges was sent to the employer's last-known address of record showing \$1,730.90 was paid to the claimant in the third quarter 2008. The employer did not receive the statement of charges. On November 17, 2008 a notice of unemployment insurance contribution rate was sent to the employer's last-known address of record showing an increase in the employer's contribution rate as a result of the benefits paid to the claimant. The employer did not receive the notice.

The employer's business is an apartment complex. During 2008 the mail was being delivered by a series of replacement mail carriers, as the mail carrier that had previously served that route was gone. The employer was aware of several incidents of mail being deposited in residents' boxes rather than being delivered to the apartment office.

In the spring of 2009 the employer received a bill for a payment based on the increase in the contribution rate. Mr. Elliott, the manager, contacted the local Agency office to inquire why he was receiving a bill and was told about the notice of claim and quarterly statements of charges and notice of contribution rate had been sent to him in 2008 and that it was now too late to do anything. The employer continued to complain to various Agency representatives and was ultimately advised to write a letter of appeal, which was done and postmarked on August 22, 2009.

REASONING AND CONCLUSIONS OF LAW:

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the Beardslee court controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. Messina v. IDJS, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. Hendren v. IESC, 217 N.W.2d 255 (Iowa 1974); Smith v. IESC, 212 N.W.2d 471, 472 (Iowa 1973).

Similar to the protest provisions, the law also provides that an employer which has not received the normal notice of claim may within thirty days after the date of mailing of the statement of charges appeal to the department for a hearing to determine the eligibility of the individual to receive benefits. The same timing provisions apply.

While it is highly unusual for five pieces of mail to be misdelivered, nearly incredible, there is no direct evidence to contradict the employer's testimony that it did not receive the notifications, and the testimony that there were irregularities in the mail delivery due to substitute mail carriers is plausible. Therefore, the record shows that the employer did not have a reasonable opportunity to file a timely protest to the notice of claim or to the quarterly statements of charges.

The record establishes that the employer's representative did not receive the notice of claim or the quarterly statements of charges. The employer was not responsible for the delay in receiving the notice of claim, but the delay was due to department error or misinformation or delay or other action of the United States Postal Service. The employer did respond by complaining to the Agency promptly upon learning of the claim and the charges against its

account. The administrative law judge, therefore, concludes that the protest is treated as timely pursuant to Iowa Code § 96.6-2. This matter is remanded to the Claims Section to investigate the separation issue and determine whether the employer's account will or will not be subject to charges based on benefits the claimant has received.

DECISION:

The protest and response to the notices of charges are deemed timely. The matter is remanded to the Claims Section for investigation and determination of the separation and chargeability issues.

Lynette A. F. Donner
Administrative Law Judge

Decision Dated and Mailed

ld/css