

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL S ZAMBRANO
Claimant

APPEAL 19A-UI-01114-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

IOWA CITY PR LLC
Employer

**OC: 09/23/18
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timely 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 February 25, 2019. Claimant participated. Employer participated through witness Kristin Auna. 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?

FINDINGS OF FACT:

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

A notice of claim was mailed to P and S Restaurant Group's correct address of record on September 28, 2018 regarding claimant's claim for unemployment insurance benefits which was effective September 23, 2018. The statement of charges read "...your account may receive charges based upon wages you have paid this claimant unless you provide Iowa Workforce Development with information justifying relief from such charges." On December 28, 2018, an Unemployment Insurance Tax Bureau decision was issued that found Iowa City PR, LLC is liable for any debt P and S Restaurant Group Inc may owe Iowa Workforce Development.

The employer did not provide any credible evidence that it failed to receive the notice of claim prior to the response deadline of October 9, 2018. Ms. Auna testified that she believed that it was possible the mail was lost by the employer when it moved from one address to another. There was no credible testimony provided that the lack of notice was due to postal service error or agency error, rather than the employer's error in misplacing the notice.

No fact-finding interview regarding claimant's separation from employment was conducted because no timely employer statement of protest was received by Iowa Workforce Development from the employer. The statement of charges for the fourth quarter of 2018 was mailed to the

employer on February 8, 2019. The employer filed an appeal to the statement of charges on February 10, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not file a timely protest to the notice of claim and as such, the conditions for appealing the statement of charges have not been met.

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

An exception exists to filing a response within ten days if there is credible evidence that the delay was due to agency error, misinformation or delay, or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). If the employer has failed to file a timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make any determination with respect to the nature of the claimant's separation from employment. See *Beardslee*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

When an employer's protest of an initial claim for benefits is filed and an issue could result in a decision detrimental to an interested party, the rules require that the interested party shall be afforded the opportunity to present facts and evidence which may include an informational fact-finding interview scheduled by the department. Iowa Admin. Code r. 871-24.9(2). A decision is then issued by the department regarding the issue. *Id.* Regular proceeding by the agency would have meant the protest would be retained, a protest docketed, a fact-finding interview scheduled and held, and a decision issued. If a protest had been received prior to the due date, the regular process should have been triggered, but it was not. "The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular". Iowa Code § 622.56; *accord City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982). Thus, there is a presumption, as the agency has no record of receiving a protest prior to the due date, that none was sent. This is not an absolute presumption, but rather it is one that may be overcome with sufficiently probative evidence.

However, the employer did not present credible evidence that it failed to receive the notice of claim mailed to it on September 28, 2018, given the fact that the notice of claim was mailed to P and S Restaurant Group's correct address of record. Further, Ms. Auna credibly testified that it could have been lost by the employer because it was in the process of moving to a different

location. Because the employer failed to complete and return the statement of protest to Iowa Workforce Development prior to the October 9, 2018 due date, it has failed to file a timely protest. If an employer fails to file a timely protest, Iowa Code § 96.7(2)a(6) is not applicable, given the fact that the statement of charges was not the first notification the employer received regarding the allowance 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.

(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) of the allowance of benefits. In this case, the employer was previously notified of the claim when the notice of claim was mailed to it on September 28, 2018. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met. The statement of charges dated February 8, 2019 is affirmed.

DECISION:

The employer failed to file a timely protest. The conditions for appealing the statement of charges have not been met. The February 8, 2019 statement of charges for the fourth quarter of 2018 is affirmed.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs