

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

FELICIA L JOHNSON
Claimant

HDS LTD
Employer

APPEAL 22A-UI-04569-DB-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 07/25/21
Claimant: Respondent (1R)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(2)A(6) – Statement of Charges

STATEMENT OF THE CASE:

On February 11, 2022, the employer filed an appeal from the statement of charges dated February 9, 2022 which listed charges for the fourth quarter of 2021. A hearing was scheduled and held on March 24, 2022, pursuant to due notice. Claimant participated personally. Employer participated through witness Mike Chamberlain. Official notice was taken of the administrative record.

ISSUES:

Was the employer's protest to the notice of claim timely?
Was 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: Claimant filed a claim for unemployment insurance benefits with an effective date of July 25, 2021. She filed weekly-continued claims through the week-ending October 30, 2021.

A Notice of Claim and Statement of Protest was mailed to the employer from Iowa Workforce Development (IWD) when the claimant filed her claim for benefits in July of 2021; however, the employer never received it in the mail. It was mailed to the employer's correct address of record.

The employer then received a statement of charges dated November 9, 2021 for the quarter ending September 30, 2021 that listed charges regarding the claimant. This was the first notification that the employer received stating that the claimant was eligible for benefits. The employer mailed in an appeal of the November 9, 2021 statement of charges to the Appeals Bureau; however, no appeal was docketed and the letter was sent to the Tax Bureau. The employer received a letter from the Tax Bureau in December of 2021 stating that the charges were correct.

The employer received a statement of charges dated February 9, 2022 for the fourth quarter ending December 31, 2021 that listed charges regarding the claimant. The employer filed an

appeal to the statement of charges on February 11, 2022 and that appeal was docketed. The employer intended to protest charges to its account.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant.

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

Iowa Code § 96.6(2) addresses the timeliness of an appeal from a representative's decision and states that an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d. 373 (Iowa 1979). This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer.

The failure to file a timely protest in this case was due to delay or other action on the United States Postal Service, which under 871 IAC 24.35(2), would excuse the delay in filing the protest. The employer failed to file a protest within the time period prescribed by Iowa Code § 96.6(2) because it never received the initial notice of claim.

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. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

Iowa Code § 96.7(2)a(6) states that an employer who did not receive notice of the claim may appeal to the department for a hearing to determine the eligibility of an individual to receive benefits. In this case, the first notice of the allowance of benefits to the claimant was the statement of charges for which the employer mailed in an appeal to back in November of 2021. No appeal was docketed however, and the employer only received a letter stating that the charges were correct. Then, when the employer received the February 9, 2022 statement of charges, it promptly filed an appeal on February 11, 2022.

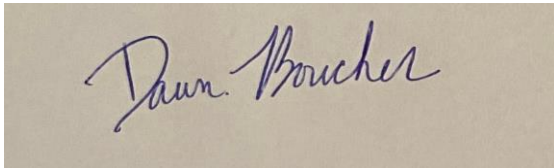
The administrative law judge concludes that the employer filed its appeal of the statement of charges within the time period prescribed by the Iowa Employment Security Law because it did not receive any initial notice of claim in July of 2021 and its first appeal to the November 9, 2021 statement of charges was never docketed. The employer's appeal to the statement of charges dated February 9, 2022 is timely. The issue of whether the claimant's separation from employment was disqualifying and/or whether the employer's account is chargeable for benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The February 9, 2022 statement of charges for the fourth quarter of 2021 is affirmed pending a determination on the remanded issues. The employer has filed a timely appeal from the February 9, 2022 statement of charges.

REMAND:

The issue of whether the claimant's separation from employment was disqualifying and/or whether the employer's account is chargeable for benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Dawn Boucher
Administrative Law Judge

April 1, 2022
Decision Dated and Mailed

db/db