

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

GARY J SEMLER

Claimant

ROHER BROTHERS INC

Employer

APPEAL 17A-UI-12337-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/20/16

Claimant: RESPONDENT (1)

Iowa Code § 96.6(2) – Timely protest

Iowa Code § 96.7(2)a(6) – Appeal from quarterly statement of charges

STATEMENT OF THE CASE:

The employer filed an appeal from the November 9, 2017, statement of charges for the third quarter of 2017. The parties were properly notified about the hearing. A telephone hearing was held on December 21, 2017. Claimant did not participate. Employer participated through Paul Thys, Manager. Official notice was taken of agency records.

ISSUE:

Did the employer file a timely appeal to the third quarter 2017 statement of charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer chose to have all of their mail from the agency sent to their accountant's mailing address at PO Box 107, Grinnell, Iowa 50112. The employer would then rely on their accountant to pass whatever paperwork was received on to the company controller. A notice of claim was mailed to the employer on November 29, **2016** putting them on notice that claimant had filed a claim for benefits. The notice specifically provided: "[a]s an employer of this claimant within the past 18 months from the effective date of claim, 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. Any benefits paid may result in a rate increase to your account." The employer was also notified that its account was potentially subject to \$13,156.00 in charges unless it furnished detailed information justifying relief from charges on the notice of claim. The employer never filed any protest to the claim.

Claimant was paid unemployment insurance benefits in the fourth quarter of 2016. On February 9, 2017 a statement of charges was mailed to the employer's chosen mailing address at PO Box 107, Grinnell, Iowa 50112. That statement put the employer on notice that their account was being charged \$341.00 for benefits paid to claimant during the fourth quarter of 2016. The employer never filed an appeal to the February 9, 2017 Statement of Charges.

Claimant was paid unemployment insurance benefits in the first quarter of 2017. On May 9, 2017, a statement of charges was mailed to the employer's chosen mailing address at PO Box 107, Grinnell, Iowa 50112. That statement put the employer on notice that their account was being charged \$1,333.00 for benefits paid to claimant during the first quarter of 2017. The employer never filed an appeal to the May 9, 2017, Statement of Charges.

The claimant did not collect unemployment insurance benefits during the second quarter of 2017.

Claimant was paid unemployment insurance benefits during the third quarter of 2017. On November 9, 2017 a statement of charges was mailed to the employer's chosen mailing address at PO Box 107, Grinnell, Iowa 50112 notifying them of charges to their account in the amount of \$990.00 for benefits paid to the claimant during the third quarter of 2017. The accountant passed the statement of charges on to the copay controller who gave it to Mr. Thys to deal with.

The employer offered no explanation as to why they did not appeal the notice of claim sent in November 2016, or the two prior to statement of charges sent in February and May 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer did not file a timely appeal to the notice of claim, nor to the two prior statements of charges, thus, they have not met the requirements to be able to file an appeal to the third quarter 2017 statement of charges.

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.

Part of the same section of the unemployment insurance law deals with 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 employer failed to file a protest within the time period prescribed by Iowa Code § 96.6(2). The first indication the employer gave the agency that they were appealing the claimant's benefits was their appeal of the third quarter 2017 statement of charges on November 29, 2017, one year after they were first sent the notice of claim. The employer's appeal to the notice of protest is untimely as it is about one year late. Because the protest was untimely, there is no jurisdiction to make a decision regarding the claimant's eligibility for benefits. *Id.*; *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). The failure to file a timely protest was not due to any Agency error or misinformation or 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 result in this case is reinforced by Iowa Code § 96.7(2)a(6), which states as follows:

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.

Two statements of charges were mailed to the employer in February and May 2017 respectively. The employer never appealed either of those statements of charges. An employer is only allowed to appeal to the department 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 notice of claim. In this case, the employer did not file an appeal to the notice of claim. Nor did they address the issue in February 2017 or May 2017 when they were previously mailed statement of charges listing the claimant as collecting benefits. As such, the conditions for appealing the statement of charges for third quarter of 2017 under Iowa Code § 96.7(2)a(6) have not been met.

DECISION:

The employer has failed to file a timely protest and has not met the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6). The charges for the third quarter of 2017 shall remain in full force and effect.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs