

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DILLON WILDMAN
Claimant

APPEAL 19A-UI-02953-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

EMERALD GREEN LAWN CARE INC
Employer

**OC: 11/25/18
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 fourth quarter 2018, statement of charges that notified them that their account was being charged for benefits paid to Dillon Wildman. The parties were properly notified about the hearing. A telephone hearing was held on April 29, 2019. Claimant participated. Employer participated through Jeff Pickle, Owner. Official notice was taken of agency records.

ISSUES:

Did the employer file a timely protest to the notice of claim?
Did the employer file a timely appeal to the statement of charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A notice of claim was mailed to the employer on November 29, 2018. The employer received the notice of claim in time to file a notice of protest but opted not to file a notice of protest.

A statement of charges for the fourth quarter of 2018 was mailed to the employer on February 9, 2019. The back of the notice informed the employer that any appeal was due to the agency within thirty days of the mailing of the statement. The employer did not file any appeal to the statement of charges until April 5, 2019, after the deadline for filing the appeal had passed. The employer simply was new at dealing with unemployment matters and did not realize the appeal deadline.

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 that the employer did not file its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because it did not file an appeal of that Statement within thirty days of the mailing date. Further, the employer had been given a notice of claim and had opted not to file a protest to it. An employer may only file an appeal to the statement of charges if they have not been given a prior notice of claim. In this case, the employer had been given a notice of claim, but opted not to protest it. Under these circumstances, even if the employer had filed their appeal within thirty days of mailing, their appeal could not be accepted as timely as they did not file a timely protest when given the chance.

DECISION:

The fourth quarter 2018, Statement of Charges is affirmed. The employer did not file a timely protest nor did they file a timely appeal from the fourth quarter 2018 Statement of Charges. The charges shall remain in full force and effect.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs