

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

HUNTER MELSHA
Claimant

TERRY ANDYS TACOS INC
Employer

APPEAL 21A-UI-06676-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/05/20
Claimant: Respondent (1R)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(2)a(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

On February 12, 2021, Terry & Andy's Tacos, Inc. (employer) filed an appeal from the statement of charges dated February 9, 2021, reference 01, for the fourth quarter of 2020. A hearing was held on May 12, 2021, pursuant to due notice. Hunter Melsha (claimant) participated personally. The employer participated through Terry Cullen, Owner. The department's Exhibits D1 through D3 were admitted into the record.

ISSUES:

Was the employer's protest 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: The claimant separated from employment on March 13, 2020 and filed a claim for benefits effective April 5. The notice of claim was mailed to the employer's address of record on December 18. The employer did not receive that notice. The first notice of the claimant's claim for benefits was the receipt of the statement of charges mailed February 9, 2021, for the fourth quarter of 2020. The employer filed its appeal of that statement of charges on February 12, 2021.

The issue of whether the claimant's separation qualifies him for benefits has not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did file a timely appeal to the statement of charges.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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:

Employer contribution and reimbursements.

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. 871-26.4 provides, in relevant part:

2. An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp after the decision was mailed to the party at its last-known address and shall state the following:

- a. The name, address and social security number of the claimant;
- b. A reference to the decision from which appeal is taken; and,
- c. The grounds upon which the appeal is based.

3. Notwithstanding the provisions of subrule 26.4(2), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 30 days from the mailing date of the quarterly statement of benefit charges.

4. Also notwithstanding the provisions of subrule 26.4(2), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 15 days of the mailing date of the quarterly billing of benefit charges.

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 the notice of claim indicating the claimant had filed a claim for benefits. The employer's appeal of that statement within thirty days is timely.

The issue of whether the claimant's separation on March 13, 2020, qualifies him for benefits is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision.

DECISION:

The February 9, 2021, reference 01, statement of charges for the fourth quarter of 2020 is affirmed, pending the outcome of the remanded issue. The employer has filed a timely appeal from that statement of charges, as the notice of claim was not received.

REMAND:

The issue of whether the claimant's separation on March 13, 2020, qualifies him for benefits is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision.



Stephanie R. Callahan
Administrative Law Judge

May 19, 2021
Decision Dated and Mailed

src/ol