

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ANTHONY G POTENZO**  
Claimant

**ZHANG'S TRADING INC**  
Employer

**APPEAL 18A-UI-02560-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/17/17**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the Statement of Charges dated February 9, 2018, for the fourth quarter of 2017. Notice was issued and a hearing was held on March 22, 2018. Both parties waived receipt of due notice that listed Iowa Code § 96.6(2) and Iowa Code § 96.7(2)a(6). The claimant participated personally. The employer participated through witnesses Kevin Zhang and Mikel Menes. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUE:**

Did the employer file a timely appeal from the fourth quarter of 2017 statement of charges?

**FINDINGS OF FACT:**

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

The claimant began employment with this employer in March of 2016 and separated approximately two months later. A notice of claim was mailed to the employer's address of record regarding claimant's initial claim for benefits. The issue of whether the employer filed a timely protest was addressed in Appeal 17A-UI-10433-S1-T wherein Administrative Law Judge Beth A. Scheetz found that the employer failed to file a timely protest. That decision was not appealed by either party and remains final agency action.

On February 9, 2017, Iowa Workforce Development mailed the employer a fourth quarter 2017 statement of benefit charges notifying the employer that the benefits paid and charged to the employer's account for the fourth quarter ending December 31, 2017 amounted to \$214.67. The notice was sent to the employer's address of record and was received by the employer. The employer filed an appeal to this statement of charges on February 22, 2017.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the employer filed a timely appeal of the fourth quarter of 2017 statement of charges. For the reasons that follow, the administrative law judge concludes that it did not.

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.

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). See Appeal 17A-UI-10433-S1-T. Because the protest was untimely, there was no jurisdiction to make a decision regarding the claimant's eligibility for benefits. *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

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.

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 was notified of the claim but did not file a timely protest to the claim. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met.

**DECISION:**

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

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs