

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOHNIRA M COLLINS**

Claimant

**APPEAL 17A-UI-08178-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CHICNMAN HOSPITALITY INC**

Employer

**OC: 04/30/17**

**Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Timeliness of Protest

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the statement of charges dated August 9, 2017 for the second quarter of 2017. The parties were properly notified of the hearing. A telephone hearing was held on August 29, 2017. The claimant, Johnira M. Collins, did not participate. The employer, Chicnman Hospitality, Inc., participated through witness Garry Brumels. Employer's Exhibits 1 and 2 were admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUES:**

Did the employer file a timely protest of the claim?

Did the employer file a timely appeal from a quarterly statement of benefit charges?

**FINDINGS OF FACT:**

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

The claimant began her employment with this employer on September 13, 2016 and her employment ended on October 7, 2016. A notice of claim was mailed to the employer's address of record on May 2, 2017, after claimant filed a claim for benefits with an original claim date effective April 30, 2017.

The notice of claim stated, "[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 \$190.82 in charges unless it furnished detailed information justifying relief from charges on the notice of claim.

Mr. Brumels is the owner/operator of this employer. He was on vacation when the claimant filed for unemployment. See Exhibit 2. When he returned on May 18, 2017, he picked up the notice of claim from the employer's remote mailbox. He did not have anyone else retrieve mail while he was on vacation. The employer received the notice of claim prior to the due date, however, it did not file a response until May 19, 2017, when Mr. Brumels had returned from vacation and

attended to the mail. The employer responded to the notice of claim stating that claimant quit voluntarily without good cause attributable to the employer on 10/2016.

A decision was dated and mailed to the employer on May 24, 2017 (reference 03) that found the employer's protest untimely. The employer received that decision before the due date listed on the decision of June 3, 2017. Mr. Brumels did not file an appeal to that decision on behalf of the employer because he testified that he called and spoke to an IWD representative who stated that if an employee worked for an employer for less than 10 weeks, it would not be charged for benefits. Mr. Brumels testified that he was told by the IWD representative that he did not need to file an appeal to the May 24, 2017 decision because the employer would not be charged. Mr. Brumels did not provide the name of the representative or the date that he called. The May 24, 2017 decision specifically stated that the employer's account may be charged for benefits paid.

On August 9, 2017, Iowa Workforce Development ("IWD") mailed the employer a second quarter 2017 statement of benefit charges notifying the employer that the benefits paid to claimant and charged to the employer's account were \$190.82 for the quarter ending June 30, 2017. The notice was sent to the employer's address of record and was received by the employer. The employer filed an appeal to the statement of charges on August 10, 2017, by email. See Exhibit 2.

#### **REASONING AND CONCLUSIONS OF LAW:**

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

Iowa Code § 96.6(2) provides:

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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

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.

In this case, the employer failed to file a timely protest because Mr. Brumels was on vacation and did not pick up the employer's mail from the mailbox until he returned. Upon returning from vacation, Mr. Brumels completed and submitted the protest on May 19, 2017, when it was due on May 12, 2017. 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.

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 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.

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 receive the notice of claim and responded after the due date. 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 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 second 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