IOWA WORKFORCE DEVELOPMENT UNEMPLOYMENT INSURANCE APPEALS BUREAU

SUSAN A BROWN Claimant	APPEAL 17A-UI-08395-DB-T
	ADMINISTRATIVE LAW JUDGE DECISION
ONE IA DUBUQUE HIE MANAGEMENT LLC Employer	
	OC: 01/01/17 Claimant: Respondent (1)

Iowa Code § 96.6(2) - Timeliness of Appeal/Protest Iowa Code § 96.7(2)A(6) – Employer's Appeal to Quarterly Statement of Charges

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the February 7, 2017 (reference 04) unemployment insurance decision that found that the employer's protest was not timely. The parties were properly notified of the hearing. A telephone hearing was held on September 5, 2017. The claimant, Susan A. Brown, did not participate. The employer, One IA Dubuque Hie Management LLC, participated through witness Lynette Montes. The Department's Exhibit D1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUE:

Is the employer's appeal to the February 7, 2017 (reference 04) decision timely?

FINDINGS OF FACT:

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

The claimant separated from employment in January of 2016. A notice of claim was mailed to the employer on January 9, 2017 with a due date of January 19, 2017. The employer received the notice of claim prior to the due date but the employee who completed the statement of protest was out of the office until January 23, 2017, when she completed the statement of protest. See Exhibit D1. The employer's statement of protest was postmarked on January 24, 2017, which was after the due date on the notice of claim.

Upon receipt of the untimely protest, a decision dated February 7, 2017 (reference 04) was issued that found the employer's protest was not accepted because it was not timely and that the employer's account may be charged for benefits paid. The employer received the decision dated February 7, 2017 (reference 04) before the appeal deadline. The decision stated that it became final unless an appeal was postmarked by February 17, 2017. The employer filed an appeal to the decision on August 16, 2017, well after the February 17, 2017 appeal deadline.

A statement of charges for the first quarter of 2017 was mailed to the employer on May 9, 2017, which the employer received. The claimant's name and amount of benefits charged to the employer's account was listed on the first quarter 2017 statement of charges. No timely appeal to the first quarter of 2017 statement of charges was filed by the employer.

The second quarter of 2017 statement of charges was mailed to the employer on August 9, 2017, which the employer received. The employer filed an appeal to the second quarter of 2017 statement of charges on August 16, 2017 via facsimile.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's appeal is untimely.

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 disgualified 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 disgualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary guit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disgualified 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.

(emphasis added).

The portion of this Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

The employer has not shown any good cause for failure to comply with the jurisdictional time limit to file a timely appeal to the decision dated February 7, 2017 (reference 04) or that the delay was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of any underlying issues, including whether the employer filed a timely statement of protest. Iowa Code § 96.6(2).

DECISION:

The February 7, 2017 (reference 04) unemployment insurance decision is affirmed. Employer has failed to file a timely appeal and the unemployment insurance decision shall stand and remain in full force and effect.

Dawn Boucher Administrative Law Judge

Decision Dated and Mailed

db/rvs