

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**TYLER A STINSON**  
Claimant

**APPEAL NO: 19A-UI-09242-JE-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ULTIMATE ENTERTAINMENT LLC**  
Employer

**OC: 07/14/19**  
**Claimant: Respondent (2R)**

Iowa Code section 96.6(2) – Timeliness of Protest  
Iowa Code section 96.7(2)a(6) – Application for Redetermination

**STATEMENT OF THE CASE:**

The employer filed a timely appeal from the November 8, 2019, Statement of Charges which listed benefit charge information for the third quarter of 2019. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on December 17, 2019. The claimant participated in the hearing. Travis Newell, Owner, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

**ISSUE:**

The issue is whether the employer's protest and appeal from the Statement of Charges are timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on July 19, 2019. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. That date fell on July 29, 2019. The employer testified it moved in January 2019 and thought its accountant changed its address with the Department. It switched accountants during the summer of 2019 and received the quarterly Statement of Charges mailed November 8, 2019, for the third quarter of 2019. The employer submitted its appeal for the Notice of Claim and Statement of Charges on November 21, 2019, which was within thirty days of November 8, 2019.

**REASONING AND CONCLUSIONS OF LAW:**

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.

An employer who did not receive notice of the claim may appeal to the department for a hearing to determine the eligibility of an individual to receive benefits. Iowa Code section 96.7(2)a(6).

In this case, the employer filed the appeal to the statement of charges within the 30 day deadline. The only issue is whether the employer received the notice of claim.

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.

Another portion of this same 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. IDJS*, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed

By analogy to appeals from initial determinations, the ten-day period for filing a protest is jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dep't of Job Service*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the protesting party was constitutionally invalid. *Beardslee v. Iowa Dep't of Job Service*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the protester was deprived of a reasonable opportunity to assert the protest in a timely manner. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973).

The administrative law judge concludes that the employer did not receive notice of the claim at its correct address and therefore it was deprived of a reasonable opportunity to assert the

protest in a timely fashion. The employer did not have the opportunity to respond to the notice of claim and therefore the issue of the claimant's separation from employment is remanded to the Benefits Bureau for a fact-finding interview.

**DECISION:**

The November 8, 2019, statement of charges is reversed. The employer did not receive the claimant's notice of claim and was therefore deprived of the opportunity to timely protest the notice of claim. The issue of the claimant's separation from this employer is remanded to the Benefits Bureau for a fact-finding interview.

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Julie Elder  
Administrative Law Judge

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Decision Dated and Mailed

je/scn