

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CARL L AUSTIN
Claimant

TEMP ASSOCIATES – IOWA INC
Employer

APPEAL 19A-UI-06440-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 06/17/18
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Filing – Timely protest
Iowa Code § 96.7(2)A(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

Employer/appellant filed an appeal from the Statement of Charges dated August 9, 2019 for the second quarter of 2019. The parties were properly notified of the hearing. A telephone hearing was held on September 9, 2019, at 3:00 p.m. Claimant did not participate. Employer participated through Sherry Savely, Branch Manager. Department's Exhibit D-1 was admitted. Official notice was taken of the administrative record.

ISSUES:

Whether employer's protest is timely.
Whether employer's appeal from the statement of charges is timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed his claim for benefits effective June 17, 2018 and reopened his claim for benefits effective May 12, 2019. The notice of claim was mailed to the employer's address of record on June 22, 2018. Employer does not recall whether it received the notice of claim or filed a protest. Iowa Workforce Development did not receive an Employer Statement of Protest to the claim. Employer received the Statement of Charges mailed November 9, 2018 for the third quarter of 2018, which included a charge for claimant. Employer did not appeal that Statement of Charges. Employer received the Statement of Charges mailed August 9, 2019 for the second quarter of 2019, which included a charge for claimant. Employer filed an appeal of that Statement of Charges on August 13, 2019. Employer is protesting the claim on the basis that claimant's employment with Temp Associates – Iowa, Inc. ended on September 8, 2018 when claimant converted to full-time employment with the company where he had been assigned.

REASONING AND CONCLUSIONS OF LAW:

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

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 the Iowa Supreme 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.

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.

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.

Employer failed to timely protest the claimant's receipt of benefits upon receiving first notice of the claim. Claimant separated from employment on September 7, 2018. Employer received a statement of charges mailed November 9, 2018 for the third quarter showing that, after the change in employment status, the claimant was still receiving benefits. The employer did not file its appeal within 30 days of the first notification it had the claimant was receiving benefits following the change in employment status.

DECISION:

Employer did not timely protest the claimant's receipt of benefits as it did not appeal its first notice of claim. The Statement of Charges mailed August 9, 2019 for second quarter 2019 is affirmed. The charges shall remain in full force and effect.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/scn