

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

HECTOR M MARTINEZ

Claimant

APPEAL NO: 19A-UI-06766-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MICHAEL A MALMIN CONSTRUCTION

Employer

OC: 01/13/19

Claimant: Respondent (1)

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 May 9, 2019, Statement of Charges which listed benefit charge information for the second quarter of 2019. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 19, 2019. The claimant did not respond to the hearing notice and did not participate in the hearing. Jill Malmin, Bookkeeper and Michael Malmin, Owner, participated in the hearing on behalf of the employer. Department's Exhibits D-1 and D-2 were 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 January 15, 2019, and received by the employer. 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 January 25, 2019. The employer testified it chose not to protest the claim because it was filed as a temporary layoff and the employer agreed with that statement.

The employer received the Statement of Charges mailed May 9, 2019, for the second quarter of 2019. The employer submitted its appeal for the Notice of Claim and Statement of Charges on August 26, 2019, which was not within thirty days of May 9, 2019.

On July 18, 2019, a representative's decision was issued stating the claimant was overpaid benefits in the net amount of \$4,820.00 and finding he incorrectly or failed to report earnings from the employer. Consequently, the employer's account will be credited on the next statement of charges.

REASONING AND CONCLUSIONS OF LAW:

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.

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. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

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 receive the notice of the claim at its address and therefore it was not deprived of a reasonable opportunity to assert the protest in a timely fashion. The employer had the opportunity to respond to the notice of claim and chose not to protest it.

In summary, the employer received prior notice of claim and had a reasonable opportunity to respond to it but failed to do so in a timely manner. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand the case for a fact-finding interview. Iowa Code section 96.6-2. The charges related to the claimant's separation will remain in effect and the claimant is allowed benefits.

Note to the employer: Because of the decision finding the claimant overpaid benefits due to incorrectly or failing to report earnings, the employer will receive a credit on its account on the next statement of charges.

DECISION:

The May 9, 2019, statement of charges is affirmed. The employer did not file a timely protest to the notice of claim. The charges shall remain in full force and effect. Benefits are allowed, provided the claimant is otherwise eligible.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn