

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RODRIGO B CALLEJA
Claimant

APPEAL 18A-UI-11757-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LARSON CONTRACTING CENTRAL LLC
Employer

**OC: 01/28/18
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(2)a(6) – Appeal from the Quarterly Statement of Charges

STATEMENT OF THE CASE:

The employer filed an appeal from the statement of charges dated November 9, 2018, for the third quarter of 2018. Due notice was issued and a hearing was held on December 28, 2018. The claimant did participate personally. Anita Calleja participated as the claimant's representative and as a witness on behalf of the claimant. The employer participated through witness Rochelle Kalvig. Department's Exhibit D1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

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:

Claimant filed an initial claim for unemployment insurance benefits effective January 28, 2018 and an additional claim for benefits effective March 11, 2018. A notice of claim was mailed to the employer's address of record on March 13, 2018 regarding claimant's additional claim for unemployment insurance benefits with an effective date of March 11, 2018. See Exhibit D1. The employer returned the notice of claim to Iowa Workforce Development ("IWD") on May 30, 2018 and responded that it was not protesting this claim. See Exhibit D1. In the remarks section the employer stated "5/29/18 called back to work". See Exhibit D1. 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." See Exhibit D1.

The administrative record establishes that on July 16, 2018, IWD mailed the employer a statement of charges for the first quarter of 2018 notifying the employer that the claimant received \$2,940.00 in benefits charged to the employer's account for the quarter ending

March 31, 2018. The employer did not file a timely appeal to that statement of charges because it did not contest charges at that time.

The administrative record establishes that on August 9, 2018, IWD mailed the employer a statement of charges for the second quarter of 2018 notifying the employer that the claimant received \$6,370.00 in benefits charged to the employer's account for the quarter ending June 30, 2018. The employer did not file a timely appeal to that statement of charges even though it did contest charges at that time.

On November 9, 2018, IWD mailed the employer a statement of charges for the third quarter of 2018 notifying the employer that the claimant received \$3,430.00 in benefits charged to the employer's account for the quarter ending September 30, 2018. The employer filed an appeal to this statement of charges on December 6, 2018.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits for claimant's claim effective January 28, 2018 and additional claim effective March 11, 2018. For the reasons that follow, the administrative law judge concludes that it did not.

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states that an appeal must be filed within ten days after the date the decision was mailed to the parties. 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's response to the notice of claim stated that it was not protesting this claim. As such, the employer failed to file a protest within the time period prescribed by Iowa Code § 96.6(2). Further, the employer failed to file a timely appeal to the statement of charges dated August 9, 2018. It was not until the employer filed an appeal to the statement of charges dated November 9, 2018 that IWD was first notified that the employer was protesting charges to its account. 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 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.

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 that it was not protesting. It further failed to provide information justifying relief of charges to IWD. 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 third quarter of 2018 shall remain in full force and effect.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs