

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SCOTT A BUSH
Claimant

J'S AUTO INC
Employer

APPEAL 20A-UI-04722-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/17/19
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

On May 16, 2020, the employer filed an appeal from the statement of charges dated May 8, 2020, that listed charge information for the quarter ending March 31, 2020 regarding claimant's original claim date of February 17, 2019. A hearing was scheduled and held on July 13, 2020, pursuant to due notice. Claimant did not participate. Employer participated through witness Kala Schnittjer. Official notice was taken of the administrative record.

ISSUES:

Was the employer's protest timely?
Was the employer's appeal from the statement of charges timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits with an effective date of January 21, 2018 following a separation from employment with this employer. A decision allowing benefits was issued on February 12, 2018 and the employer filed an appeal. An appeal hearing was scheduled and the employer failed to participate. A default decision was entered on March 16, 2018. The employer received a copy of that decision in the mail. The employer did not file an appeal to the Employment Appeal Board because Ms. Schnittjer misunderstood the decision. The decision allowed benefits and found that the employer's account may be charged for benefits paid. See Unemployment Insurance Decision dated February 12, 2018 and ALJ decision dated March 16, 2018.

Claimant filed another claim for unemployment insurance benefits with an original claim date of February 17, 2019. This employer was mailed a statement of charges dated February 7, 2020 listing charges to the employer's account of \$1,924.58 for claimant's February 17, 2019 original claim date. No appeal was filed by the employer from that February 7, 2020 statement of charges. A statement of charges dated May 8, 2020 listing charge information for the quarter ending March 31, 2020 of \$405.00 regarding claimant February 17, 2019 original claim date was mailed to the employer and it filed an appeal to that statement of charges on May 16, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer failed to file a timely appeal from the statement of charges.

Iowa Code section 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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 issued, 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 section 96.8, subsection 5.

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. Iowa Dep't of Job Serv.*, 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 issued.

An exception exists to filing a response within ten days if there is credible evidence that the delay was due to agency error, misinformation or delay, or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). If the employer has failed to file a timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make any determination with respect to the nature of the claimant's separation from employment. See *Beardslee*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*,

277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

Further, an employer which has not been notified as provided in section 96.6(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.

Iowa Code section 96.7(2)a(6) provides:

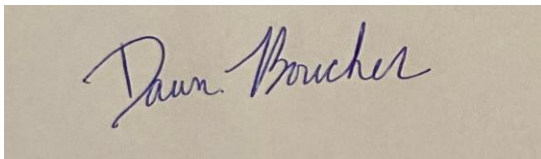
2. Contribution rates based on benefit experience.

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.

In this case, the employer had received notification of the allowance of benefits back on February 12, 2018 when the initial unemployment insurance decision found that the claimant was allowed benefits following his voluntary quitting of work and the employer's account may be charged for benefits paid. The employer appealed that decision but failed to attend the appeal hearing. The employer then again received notification that the claimant had been allowed benefits when it received the ALJ decision dated March 16, 2018; however, it failed to file an appeal to the Employment Appeal Board. The employer then failed to file an appeal to the statement of charges dated February 7, 2020. If an employer fails to file a timely appeal, Iowa Code § 96.7(2)a(6) is not applicable, given the fact that the statement of charges was not the first notification the employer received regarding the allowance of benefits to the claimant. The employer's first notification of the allowance of benefits and that its account may be charged for benefits paid was not this statement of charges dated May 8, 2020. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met. The statement of charges dated May 8, 2020 is affirmed.

DECISION:

The statement of charges dated May 8, 2020 is affirmed. The conditions for appealing the statement of charges have not been met.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

July 21, 2020
Decision Dated and Mailed

db/sam