

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JOHN A TAYLOR
Claimant

AMERISERVE INTERNATIONAL INC
Employer

APPEAL 20A-UI-06513-AW-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 02/09/20
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 filed an appeal from the Statement of Charges dated May 8, 2020 for the first quarter of 2020. The parties were properly notified of the hearing. A telephone hearing was held on July 13, 2020, at 8:00 a.m. Claimant did not participate. Employer participated through Greg Scott, Lead Client Services Coordinator. No exhibits were 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 a claim for unemployment insurance benefits effective February 9, 2020. A Notice of Claim was mailed to employer at its correct address on February 17, 2020. Employer did not receive the Notice of Claim and, thus, did not submit a protest to Iowa Workforce Development (IWD).

Employer received a Statement of Charges mailed May 8, 2020 for the first quarter of 2020, which included a charge for claimant. Employer received the Statement of Charges within two or three days of the date of mailing. Employer filed an appeal of the Statement of Charges on June 9, 2020 via facsimile. Employer did not file its appeal prior to the due date because its fax machine was out of operation for three days including the due date. Employer did not submit its appeal in another manner because its normal procedure is to submit them via facsimile.

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 did not receive the Notice of Claim and, therefore, had 30 days from the date of mailing of the Statement of Charges to protest the claim by appealing the Statement of Charges. Employer did not submit its appeal of the Statement of Charges prior to the 30-day deadline. Employer's appeal is untimely.

DECISION:

Employer's appeal is untimely. The Statement of Charges mailed May 8, 2020 for the first quarter of 2020 is affirmed. The charges shall remain in full force and effect.



Adrienne C. Williamson
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July 20, 2020
Decision Dated and Mailed

acw/scn