

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARTHA A PFITZENMAIER
Claimant

APPEAL 18A-UI-07912-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LINDSAY PARK BOAT CLUB INC
Employer

OC: 03/04/18
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:

Lindsay Park Boat Club, Inc. (employer) filed an appeal from the Statement of Charges dated July 16, 2018, for the first quarter of 2018. A hearing was held on August 10, 2018, pursuant to due notice. Martha A. Pfitzenmaier (claimant) participated personally. The employer participated through Vice Commodore Daniel Darland and Bookkeeper Kathy Anderson. The claimant submitted documents for the hearing, but they were not admitted into the record because they pertained to the separation which is not relevant to the issues for the hearing.

ISSUES:

Was the employer's protest timely?

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

FINDINGS OF FACT:

The claimant filed her claim for benefits effective March 4, 2018, after the expiration of her employer contract. A notice of claim was mailed to the employer's address of record on March 8, 2018. Treasurer Mike Carroll would retrieve the mail from the post office box. Bookkeeper Kathy Anderson did not take over responding to Iowa Workforce Development mailings until after the start of the employer's 2018 season, on or about April 1, 2018. Vice Commodore Daniel Darland joined the board on or about April 1, 2018. Neither witness knows Carroll's process for handling the mail during the timeframe in which the notice of claim was sent.

On July 16, 2018, a Statement of Charges was mailed to the employer's address of record for the first quarter of 2018. Due to the change in accounting practices on April 1, it was delivered to Anderson. The employer filed its appeal to that Statement of Charges on July 24, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not timely file its appeal to the Statement of Charges.

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. [Emphasis added.]

The employer failed to timely appeal the claimant's receipt of benefits upon receiving notice. The employer has the burden of proof to show it timely responded to agency documents. There is a presumption that mail is delivered without issue when sent to the correct address. The employer can overcome this presumption if the notice was mailed or delivered to the incorrect address, with credible testimony from the person receiving the mail denying it was received, or with an explanation as to how the documents are handled during the normal course of business.

In this case, the notice of claim was mailed to the correct address. The employer's witnesses were not aware of the process in place when the document would have been received, did not provide the person who handled the mail as a witness, and did not speak to the person who handled the mail. The employer did not supply sufficient information to overcome the presumption that it received the document mailed to its address of record. Therefore, the employer's appeal of the Statement of Charges is not timely as the employer had prior notice of the claimant's eligibility for unemployment insurance benefits and failed to act upon it.

DECISION:

The July 16, 2018, Statement of Charges for the first quarter of 2018 is affirmed. The employer did not timely file an appeal from the first notification it had that the claimant was eligible to receive unemployment insurance benefits.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn