

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JASO E COLE
Claimant

CONLIN PROPERTIES INC
Employer

APPEAL 21A-UI-10667-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/13/20
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 11, 2021, Conlin Properties, Inc. (employer) filed an appeal from the statement of charges dated May 7, 2021, reference 01, for the first quarter of 2021. After due notice was issued, a telephone hearing was held on July 1, 2021, and consolidated with the hearing for appeal 21A-UI-10648-SC-T. Jaso E. Cole (claimant) did not respond to the hearing notice and did not participate. The employer participated through Kathy DeWald, HR Director. The department's Exhibits D1 through D4 were received.

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: The claimant separated from employment on September 28, 2020, and filed a claim for benefits effective December 13, 2020. The notice of claim was provided to the employer in the SIDES system with an e-mail alert on December 17. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of December 28. The employer did not file a protest response to that notice of claim.

The next notice of the claimant's claim for benefits was the receipt of the statement of charges mailed February 9, 2021, for the fourth quarter of 2020. The employer filed its first protest and appeal of the claimant's receipt of benefits on May 11, following the receipt of the notice of reimbursable benefit charges mailed May 7, for the first quarter of 2021.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not file a timely protest to the notice of claim it received and it does not have appeal rights to the notice of reimbursable benefit 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.]

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.

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 filed its first protest after the deadline. The employer has not established that the delay was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 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).

With regard to appeals from the statement of charges, Iowa Code section 96.7(2)a(6) states that a contributory 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 following receipt of a statement of charges. In other words, when an employer receives a notice of claim and fails to protest in a timely manner, they do not have appeal rights to the statement of charges. In this case, the employer received the notice of claim and no longer has appeal rights to the statement of charges. The administrative law judge lacks jurisdiction to modify the charges to the employer's account.

DECISION:

The May 7, 2021, reference 01, statement of charges for the first quarter of 2021 is affirmed. The employer did not timely protest the claimant's claim for benefits and the charges to the account are correct.



Stephanie R. Callahan
Administrative Law Judge

July 13, 2021
Decision Dated and Mailed

src/mh