

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

JODY M HINGTGEN
Claimant

APPEAL NO. 19A-UI-04403-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

INDY RANCH INC
Employer

OC: 12/23/18
Claimant: Respondent (2R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal to the statement of charges for the first quarter of 2019, reference 01. After due notice was issued, a hearing was held by telephone conference call on June 25, 2019. The claimant did participate. The employer participated through William Turner, Owner. Department's Exhibits D-1 and D-2 were received into evidence.

ISSUE:

The issue is whether the employer's protest is timely and whether its protest of the statement of charges is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant filed for unemployment insurance benefits with an effective date of December 23, 2018. She reported no wages for the week ending December 29, 2018, and received unemployment insurance benefits in the amount of \$405.00 for the week ending December 29, 2018. The employer paid the claimant wages of \$46.86 for the week ending December 29, 2018.

The claimant's notice of claim was mailed to the employer's address of record on December 26, 2018. The employer's general manager collects the mail approximately once per week and puts it in a manilla envelope for the owner. The owner did not see the notice of claim in the envelope. The notice of claim contained a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. No protest was filed because no protest was received.

The claimant's notice of claim was mailed to the employer's address of record on December 28, 2018, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer filed a protest by emailing a response to uicclaimshelp@iwd.iowa.gov on January 7, 2019 at 9:46 p.m., which is within the ten-day period for filing a timely appeal.

The employer received a statement of charges mailed May 9, 2019, for the first quarter of 2019. It emailed its appeal of the Statement of Charges on May 29, 2019 which was within thirty days of May 9, 2019.

REASONING AND CONCLUSIONS OF LAW:

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.

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 has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The employer did not have an opportunity to appeal the notice of claim because it was not received. Without notice of the claim, no meaningful opportunity for protest exists. See *Smith v. Iowa Employment Security Commission*, 212 N.W.2d 471, 472 (Iowa 1973). The administrative law judge concludes that employer has filed a protest because it appealed the statement of charges, the first notice of the claim.

With regard to the timeliness of the employer's appeal of the statement of charges with the thirty-day time period prescribed by the Iowa Employment Security Law, the employer did

receive the February 8, 2019, statement of charges. It indicated the claimant had filed a claim for benefits. The employer appealed the statement on May 29, 2019. Its appeal of the statement of charges is considered timely.

There are issues regarding the claimant's claim for unemployment insurance benefits that have not yet been fully investigated or adjudicated at the claims level.

DECISION:

The statement of charges for the first quarter of 2019, reference 01, is reversed. The employer's protest and appeal to the statement of charges are timely. The underlying issue of the claimant's claim for unemployment insurance benefits is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs