

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

STEPHAN J KEITH
Claimant

WOODHOUSE & LEE CONSTRUCTION CO
Employer

APPEAL 19A-UI-09111-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 07/07/19
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 November 14, 2019, Woodhouse & Lee Construction Co. (employer) filed an appeal from the statement of charges dated November 8, 2019, for the third quarter of 2019. A hearing was scheduled for December 12, 2019 and due notice was issued. On the date of the hearing, the administrative law judge contacted Thomas Woodhouse, Owner, on the cell phone number from the appeal letter. Woodhouse called back and stated he was not prepared to proceed with the hearing as he forgot about it. The administrative law judge granted a postponement.

On December 13, notice of the hearing rescheduled for December 30 were mailed to both parties. Stephan Keith (claimant) did not respond to the hearing notice and did not participate. The employer participated through Woodhouse. The Department's Exhibits D1 and D2 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the notice of claim.

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 April 13, 2018 and filed a claim for benefits effective July 7, 2019. The notice of claim was mailed to the employer's address of record on July 15, 2019. The employer did not protest the claimant's claim for benefits because Woodhouse did not think the claimant was eligible for benefits based on how little he actually worked for the employer. The employer received the statement of charges mailed November 8, 2019 for the third quarter of 2019 and learned the account was being charged for benefits based on the claimant's claim. The employer filed its appeal of that statement of charges on November 14, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not file a timely protest and appeal to the statement of charges. Benefits are allowed, provided the claimant is otherwise eligible, and charges to the employer's account cannot be waived based on this appeal.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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:

Employer contribution and reimbursements.

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. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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.

The employer failed to timely appeal the claimant's receipt of benefits upon receiving notice. The employer's misunderstanding of the unemployment insurance process does not constitute good cause for the late protest. The employer has not established that the failure to file a protest was due to any error 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). While the employer appealed the statement of charges within thirty days, it is not considered timely as the statement of charges was not the first notice of the claim received by the employer. Benefits are allowed, provided the claimant is otherwise eligible, and charges to the employer's account cannot be waived based on this appeal.

DECISION:

The November 8, 2019, statement of charges for the third quarter of 2019 is affirmed. The employer did not file a timely protest to the first notice it had that the claimant was potentially going to receive benefits chargeable to its account.

A handwritten signature in blue ink that reads "Stephanie R Callahan" with a long horizontal flourish extending to the right.

Stephanie R. Callahan
Administrative Law Judge

December 31, 2019
Decision Dated and Mailed

src/scn