

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRITTNEY N CORCORAN
Claimant

APPEAL 17A-UI-02334-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BARRYS COMET BOWL INC
Employer

**OC: 12/11/16
Claimant: Respondent (2R)**

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:

The employer filed an appeal from the Statement of Charges dated February 9, 2017, for the fourth quarter of 2016. A hearing was scheduled and held on March 24, 2017, pursuant to due notice. The claimant did participate. The employer participated through owners Peggy Sweet and Mark Barry. Employer's Exhibits 1 and 2 were received into evidence.

ISSUE:

Was the employer's protest or 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 notice of claim was mailed to the employer's address of record on December 13, 2016. The employer received that notice on December 15, 2016, filled out the Statement of Protest section, and mailed the document to the address directed that same day. The Statement of Protest was due by December 23, 2016. The employer heard nothing further about the matter until it received the Statement of Charges mailed February 9, 2017 for the fourth quarter of 2016. The employer filed its appeal of that Statement of Charges on March 1, 2017. There are issues of the reason for the separation and requalification that have not yet been investigated or adjudicated at the claim level.

REASONING AND CONCLUSIONS OF LAW:

The issue is whether employer's protest is timely. The administrative law judge concludes it is.

Iowa Code § 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 § 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 § 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.

The administrative law judge concludes the employer returned its Statement of Protest via regular mail on December 15, 2016, which was within the time frame outlined in the notice. For some unknown reason it appears the document was never received by Iowa Workforce Development. The employer did not learn that its Statement of Protest was not received until it received the Statement of Charges that was mailed on February 9, 2017. The employer filed its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law. The employer's appeal of that Statement within thirty days is timely. The issues of the reason for the separation and requalification are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The February 9, 2017, Statement of Charges for the fourth quarter of 2016 is reversed. The employer has filed a timely appeal from that Statement of Charges, as the Notice of Claim and corresponding Employer Statement of Protest was not received by Iowa Workforce Development.

REMAND:

The issues of the reason for the separation and whether the claimant has requalified for benefits are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

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