

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DUSTINN R FULLER
Claimant

APPEAL 18A-UI-03387-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAN ARENSDORF CONSTRUCTION INC
Employer

**OC: 01/01/17
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:

The employer filed an appeal from the statement of charges dated February 9, 2018, for the fourth quarter of 2017. Due notice was issued and a telephone hearing was held on April 9, 2018. The claimant participated personally. The employer participated through witness Lou Ann Arensdorf. Department's Exhibit D1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the employer file a timely protest of the claim?
Did the employer file a timely appeal from a quarterly statement of benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant was employed for this employer beginning in July of 2011. Claimant filed an initial claim for benefits with an effective date of January 1, 2017. Claimant was temporarily laid off. A notice of claim dated January 18, 2017 was mailed to the employer. Exhibit D1. The notice of claim required a response be filed by the employer on or before January 30, 2017. Exhibit D1. The employer did not respond prior to January 30, 2017. The notice of claim also stated that "[i]f status changes during claim, notify your local workforce center." Exhibit D1. Claimant permanently separated from employment in March of 2017. The employer did not notify Iowa Workforce Development when the claimant permanently separated from employment.

A statement of charges for the fourth quarter of 2017 was mailed to the employer on February 9, 2018. The employer filed its appeal of that statement of charges on February 28, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code § 96.6(2) provides:

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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding § 96.8, subsection 5.

In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer.

In this case, the employer received a notice of claim and failed to file a timely protest. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action on the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest.

Because the protest was untimely, there is no jurisdiction to make a decision regarding the claimant's eligibility for benefits. *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). The result in this case is reinforced by Iowa Code § 96.7(2)a(6), which states as follows:

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.

An employer is only allowed to appeal to the department for a hearing to determine the eligibility of the individual to receive benefits if they were not previously notified pursuant to Iowa Code § 96.6(2) of the notice of claim. In this case, the employer did receive the notice of claim and did not respond prior to the due date. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met.

DECISION:

The employer has failed to file a timely protest and has not met the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6). The charges for the fourth quarter of 2017 shall remain in full force and effect.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs