

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ETHAN M PALS
Claimant

PANDA EXPRESS INC
Employer

APPEAL 18A-UI-08151-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 11/12/17
Claimant: Respondent (4)**

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:

Panda Express, Inc. (employer) filed an appeal from the Statement of Charges dated July 16, 2018, for the first quarter of 2018. A hearing was held on August 22, 2018, pursuant to due notice. Ethan M. Pals (claimant) participated personally. The employer participated through Jasmine Gomez, Hearings Coordinator for ETS, the employer's third party vendor. The Department's Exhibits D1 through D4 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's database readout (DBRO) and wage history (WAGEA).

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 August 12, 2017 and filed a claim for benefits effective November 12, 2017. The claimant's weekly benefit amount is \$166.00. The administrative record and the claimant's testimony established that the claimant earned more than \$1,660.00 in insured wages from another employer after the separation and before filing the claim for benefits.

The notice of claim was mailed to the employer's address of record on November 20, 2017. However, the employer's address was not correct and the notice was returned to Iowa Workforce Development (IWD) as undeliverable. (Exhibit D1) On February 9, 2018, a Statement of Charges for the fourth quarter of 2017 was mailed to the employer's address of record which had been updated since the notice of claim. The employer did not receive that Statement of Charges as the address was still incorrect, containing only suite 2 and not suite 270, due to character limitations in the IWD system. (Exhibit D2)

The first notice of the claimant's claim for benefits was the receipt of the Statement of Charges mailed July 16, 2018 for the first quarter of 2018. (Exhibit D3) The employer had updated its address between the two Statements of Charges and the new address contained the correct suite number. The employer filed its appeal of the most recent Statement of Charges on July 27, 2018. (Exhibit D4)

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds that the employer filed a timely appeal to the Statement of Charges and the claimant has requalified for benefits following his separation. Benefits are allowed, provided the claimant is otherwise eligible, and the employer's account shall not be charged.

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.

The employer filed its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because it did not receive the notice of claim indicating the claimant had filed a claim for benefits or the prior Statement of Charges. The employer's appeal of the July 16, 2018 Statement of Charges was filed within thirty days and is timely. The claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The July 16, 2018, Statement of Charges for the first quarter of 2018 is modified in favor of the appellant, which will appear as a credit to the employer's account on the next Statement of Charges. The employer has filed a timely appeal from that Statement of Charges, as the notice

of claim and prior Statement of Charges were not received. The claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged and a credit shall be issued on its next Statement of Charges.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn