

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JEFFREY S CLOUGHLY**  
Claimant

**ADVANCE SERVICES INC**  
Employer

**APPEAL 17A-UI-08439-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/12/17**  
**Claimant: Respondent (4)**

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Iowa Code § 96.7(2)a(6) – Appeal from the Statement of Charges

**STATEMENT OF THE CASE:**

Advance Services, Inc. (employer) filed an appeal from the Statement of Charges dated August 9, 2017, for the second quarter of 2017. A hearing was scheduled to be held on September 15, 2017, pursuant to due notice. Jeffrey S. Cloughly (claimant) did not respond to the hearing notice and register for the hearing. The employer responded to the hearing notice instructions but no hearing was held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

**ISSUES:**

Was the employer's appeal from the Statement of Charges timely?

Is the Statement of Charges correct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant separated from his employment with the employer on January 14, 2016. He filed his claim for unemployment insurance benefits effective January 3, 2016. The employer was mailed a Notice of Claim on January 12, 2016. It timely protested the claimant's claim on January 22, 2016.

On February 12, 2016, following a fact-finding interview, Iowa Workforce Development (IWD) issued a decision that denied the claimant benefits based on his separation and stated the employer's account would not be charged. The claimant appealed the decision and it was affirmed on April 15, 2016 by an administrative law judge in the Appeals Bureau. The case was not appealed to the Employment Appeal Board and more than 15 days has passed; therefore, the administrative law judge's decision has become final agency action.

The claimant filed for a second benefit year effective March 12, 2017. The claimant's weekly benefit amount is \$428.00. The administrative record shows the claimant has had no additional employment with the employer since his disqualifying separation; however, the claimant's wages earned with the employer during his previous employment is still in his base period. The

administrative record shows the claimant has requalified for benefits by earning more than \$4,280 in gross wages since his separation from the employer.

On August 9, 2017, IWD mailed the employer a Statement of Charges for the second quarter of 2017. The statement included charges to the employer's account based on the claimant's claim for benefits. On August 17, 2017, the employer filed an appeal from the Statement of Charges related to the claimant's claim.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the employer's appeal to the Statement of Charges is timely and the Statement of Charges is not correct.

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.

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.

The employer timely filed the appeal from the Statement of Charges dated August 9, 2017 because the appeal was filed within in 30 days of the first notice the employer had that the claimant was eligible for benefits and its account was being charged. IWD determined during the claimant's first benefit year that the employer would not be liable for benefits paid to the claimant. The claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed, if the claimant is otherwise eligible, and the account of the employer shall not be charged.

**DECISION:**

The Statement of Charges dated August 9, 2017 for the second quarter of 2017 is modified in favor of the employer/appellant. The employer has filed a timely appeal from that Statement of Charges, as it was filed within 30 days of the first time the employer had noticed its account was being charged for the claimant's benefits. 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.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

src/scn