

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

ROSEMARY DUBE
Claimant

APPEAL NO. 19A-UI-04552-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PRIVATE VENTURE MANAGEMENT LLC
Employer

OC: 11/11/18
Claimant: Respondent (1)

Iowa Code § 96.6-2 – Timeliness of Protest
Section 96.7-2-a(6) – Statement of Charges

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a statement of charges dated May 9, 2019, reference 02, which assessed charges for the first quarter of 2019. After due notice, a telephone conference hearing was scheduled for and held on June 28, 2019. Employer participated by Kelly Foley. Claimant failed to respond to the hearing notice and did not participate.

ISSUE:

The issue in this matter is whether the statement of charges is correct.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: A statement of charges was mailed to the employer on May 9, 2019. Claimant filed a timely appeal of the statement of charges. The employer appealed the statement of charges on the basis that employer believed the previously entered decision in case number 18A-UI-11964 was incorrectly decided and should be reconsidered, and the employer should be able to be heard in regards to the separation issue.

Employer stated that he sold his business on October 1, 2018. He then continued to work out of the building until the end of October. Employer did get the new owner to allow him to operate remotely as of November 26, 2018. Shortly thereafter, employer accessed emails and returned the protest in this case, although it was untimely. Employer could not state a reason why he did not have the IT team from the new owner allow him remote access sooner than he did.

Employer is not disputing the amount included in the statement of charges, but whether he should be charged at all.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 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 section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 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 section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 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 section 96.8, subsection 5.

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 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.

Initially, employer filed a timely protest to the statement of charges as IWD sent out the statement on May 9, 2019 and employer responded on June 3, 2019 – well within the dictated 30 day time period.

It is held that the statement of charges is correct because the administrative law judge in case number 18A-UI-11964 previously determined the protest in this matter to not have been timely

filed. Employer did not appeal the previous decision. As employer does not dispute the information included in the statement of charges, said charges are deemed correct.

DECISION:

The statement of charges dated May 9, 2019, reference 02, is correct. Employer shall be liable for amounts contained therein.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn