

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**HETAL PATEL**  
Claimant

**OHM SHIV HOTELS INC**  
Employer

**APPEAL 17A-UI-09136-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/09/17**  
**Claimant: Respondent (1)**

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Iowa Code § 96.6(2) – Timeliness of Protest/Appeal  
Iowa Code § 96.7(2)a(6) – Appeal from the Quarterly Statement of Charges

**STATEMENT OF THE CASE:**

The employer filed an appeal from the Statement of Charges dated August 9, 2017, for the second quarter of 2017. Due notice was issued and a hearing was held on September 25, 2017. The claimant did not participate in the September 25, 2017 hearing. The employer participated through witness Dharmendra Patel. An order to re-open the record in this matter was entered on October 4, 2017 and a new hearing date was set for October 17, 2017. Due notice was issued for the October 17, 2017 hearing. Claimant participated personally, along with witness HP Patel at the October 17, 2017 hearing. Dharmendra Patel participated on behalf of the employer during the October 17, 2017 hearing. Exhibit D1 was admitted. The administrative law judge took official 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:

Claimant was employed full-time as a hotel manager at the Super 8 hotel owned by Knoxville Hospitality LLC from March of 2009 until her employment ended on March 23, 2017. HP Patel, claimant's spouse, was her immediate supervisor.

HP Patel, Max Bhagat and Russell Bhakta were each members of Knoxville Hospitality LLC. Knoxville Hospitality LLC sold the Super 8 hotel in Knoxville, Iowa to OHM Shiv Hotels Inc. by virtue of a 1031 exchange effective March 23, 2017. Knoxville Hospitality LLC is still in existence and owns real estate outside of Iowa. HP Patel is also a member of two different limited liability companies that own two hotels in Pella, Iowa. Dharmendra Patel is the owner of OHM Shiv Hotels Inc.

When the Super 8 hotel was sold to OHM Shiv Hotels Inc. in March of 2017, Dharmendra Patel told HP Patel that he would be managing the hotel himself. OHM Shiv Hotels Inc. hired three

previous employees who were housekeeping staff of Knoxville Hospitality LLC when the property was sold. It did not hire claimant because Dharmendra Patel was going to manage the hotel himself. Claimant never became an employee of OHM Shiv Hotels Inc.

Claimant filed a claim for benefits effective April 9, 2017. When claimant filed her claim for benefits, a Notice of Claim was mailed to HP Patel at 2205 N. Lincoln Street (the address of the Super 8 hotel); however, Dharmendra Patel did not open this mail because HP Patel was still collecting mail for Knoxville Hospitality LLC at this physical address. No employer statement of protest to the claim was filed because OHM Shiv Hotels Inc. did not receive the Notice of Claim.

A fact-finding interview was held regarding claimant's separation from employment with Knoxville Hospitality on April 26, 2017. Employer did not participate in the fact-finding interview because it never received notice that it was occurring. HP Patel was the contact person listed for the fact-finding interview and Dharmendra Patel was never contacted. Benefits were allowed and a decision dated April 27, 2017 was mailed to employer Knoxville Hospitality LLC to HP Patel at the 2205 N Lincoln Street address in Knoxville, Iowa. Dharmendra Patel did not open any mail addressed to HP Patel and did not receive that decision on behalf of OHM Shiv Hotels Inc.

The first notice that Dharmendra Patel received advising him that claimant was receiving benefits and OHM Shiv Hotels Inc. would be liable for charges was the August 9, 2017 Statement of Charges. The Statement of Charges was addressed to OHM Shiv Hotels Inc. and mailed to 2205 N Lincoln Street. The employer filed its timely appeal of that Statement of Charges on August 21, 2017.

The Iowa Workforce Development Tax Bureau issued a decision dated May 19, 2017 finding that OHM Shiv Hotels Inc. acquired all the business of Knoxville Hospitality LLC, UI account # 363790 effective March 23, 2017 and all experience will transfer to its account. See Exhibit D1. The decision dated May 19, 2017 also found that OHM Shiv Hotels Inc. was liable for any debt Knoxville Hospitality LLC may owe Iowa Workforce Development. See Exhibit D1. This decision was not appealed by OHM Shiv Hotels Inc.

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

The administrative law judge concludes that the employer has filed a timely appeal from the second quarter of 2017 Statement of Charges.

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.

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.

The administrative law judge concludes that the employer filed its appeal of the second quarter of 2017 Statement of Charges within the time period prescribed by Iowa Code § 96.7(2)a(6) because the Statement of Charges was the first time that the employer was notified that it would be charged for benefits paid to claimant. OHM Shiv Hotels Inc. was never informed claimant's claim for benefits existed until it received the Statement of Charges.

The issue regarding claimant's separation from employment was resolved in Appeal 17A-UI-10072-DB-T finding that claimant was eligible for benefits. As such, the statement of charges is affirmed.

**DECISION:**

The employer has filed a timely appeal from the Statement of Charges. The Statement of Charges dated August 9, 2017 for the second quarter of 2017 are affirmed. Benefits are allowed, provided the claimant is otherwise eligible pursuant to Appeal 17A-UI-10072-DB-T. The account of the employer may be subject to charges.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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