

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**ANNA K EISENLAUER**  
Claimant

**APPEAL NO: 13A-UI-13261-DT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**DRIER GROUND  
DBA BUZZARD BILLY'S**  
Employer

**OC: 03/10/13**

**Claimant: Respondent (2)**

Section 96.6-2 – Timeliness of Protest

Section 96.7-2a(6) – Appeal from the Statement of Charges

Section 96.5-2 – Discharge/Requalification

**STATEMENT OF THE CASE:**

Drier Ground doing business as Buzzard Billy's (employer) appealed from a statement of charges dated November 8, 2013 indicating that its account was being charged for benefits paid to Anna K. Eisenlauer (claimant) in the third quarter 2013. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on December 26, 2013. A review of the Appeals Section's conference call system indicates that the claimant failed to respond to the hearing notice and provide a telephone number at which she could be reached for the hearing and did not participate in the hearing. Justin Berkley appeared on the employer's behalf. During the hearing, Exhibit A-1 and Employer's Exhibits One and Two were entered into evidence. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Did the employer timely appeal the statement of charges? Is the statement of charges correct? Should the employer's protest be treated as timely? Is the employer's account subject to charge?

**FINDINGS OF FACT:**

The employer made its appeal of the November 8, 2013 statement of charges on November 13, 2013.

The claimant established a claim for unemployment insurance benefits effective March 10, 2013. A notice of claim was mailed to the employer's last-known address of record on March 12, 2013. The employer received the notice. The notice contained a warning that a protest must be postmarked or received by the Agency by March 22, 2013. The employer provided a copy of a protest signed by the employer on March 13, 2013; the employer testified that it had been faxed to the Agency on that same date. While the employer did not have a fax

transmission confirmation, the employer did receive a notice of a fact-finding interview from the Agency, mailed on March 14, 2013, scheduling a fact-finding interview for 9:20 a.m. on March 27, 2013. This tends to substantiate that the Agency received a completed protest from the employer.

The employer and claimant did participate in a fact-finding interview on March 27, 2013. The employer does not recall having received a decision following that interview. However, the Agency's NMRO system indicated that on March 28, 2013 a decision was issued between the claimant and the employer (reference 03) concluding that the claimant was eligible to receive unemployment insurance benefits after the August 27, 2012 separation from employment because she had earned at least ten times her weekly benefit amount in other employment following that separation, but that the employer's account would not be charged. Notably, when the hard copy of this supposed decision is examined on the Agency's Content Manager system, the decision does not correspond with what the NMRO system indicates the decision should be; rather, the hard copy of the decision is a decision which did not name the employer but which indicated that the claimant (at that time) had at least one decision in effect which was disqualifying from which she would need to requalify. This leads the administrative law judge to conclude that the employer had timely protested, but that the Agency misentered the decision which followed from the protest and the resulting fact-finding interview.

The claimant's last day of work was August 27, 2013. When she established her claim for unemployment insurance benefits, her weekly benefit amount was determined to be \$366.00. Agency records show that after the claimant's separation from this employer, she earned insured wages from another employer exceeding \$3,660.00.

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

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 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.

The administrative law judge concludes that the employer filed its appeal of the statement of charges within the time period prescribed by the Iowa Employment Security Law. The employer's appeal of that statement within thirty days is timely.

With regard to the issue as to whether the employer filed a timely protest, the law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6-2. Another portion of Iowa Code § 96.6-2 dealing with timeliness of an appeal from a representative's decision states an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the *Beardslee* court controlling on the portion of Iowa Code § 96.6-2 which deals with the time limit to file a protest after the notice of claim has been mailed to the employer. Pursuant to rules 871 IAC 26.2(96)(1) and 871 IAC 24.35(96)(1), protests are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983). The question in this case thus becomes whether the employer was deprived of a reasonable opportunity to assert a protest in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did file a timely protest, but was deprived of having its protest treated as timely.

The administrative law judge concludes that failure to implement the employer's protest and the result of the March 27, 2013 fact-finding interview was due to error, delay or other action of the Agency. The administrative law judge concludes that the protest was timely filed pursuant to Iowa Code § 96.6-2.

The question then is whether the employer's account is subject to charge. The employer asserted that whether the claimant was discharged for misconduct. However, the issue as to the separation does not need to be addressed because after the claimant worked for the employer but before she filed her claim for benefits March 10, 2013, she earned more than \$3,660.00 in wages from another employer. As a result, the reasons for her separation in August 2012 do not affect the claimant's eligibility to receive unemployment insurance benefits. 871 IAC 24.28(1). This also means the employer's account will not be charged for any benefits the claimant is paid.

**DECISION:**

The November 8, 2013 statement of charges is reversed. The employer filed a timely appeal from the November 8, 2013 statement of charges and filed a timely protest to the notice of claim. The claimant has requalified to receive unemployment insurance benefits after her employment with the employer ended in August 2012. The employer's account will not be charged.

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Lynette A. F. Donner  
Administrative Law Judge

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Decision Dated and Mailed

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