

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CHIKAUNA JORDAN**  
Claimant

**UFP TECHNOLOGIES INC**  
Employer

**APPEAL 18A-UI-03383-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/03/17  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the Statement of Charges dated February 9, 2018, for the fourth quarter of 2017. A hearing was scheduled and held on April 9, 2018, pursuant to due notice. Claimant did not participate. Employer participated through representative Scott Keith and witness Stephanie Wiese. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did the employer file a timely protest?  
Is 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 Notice of Claim was mailed to the employer's address of record on September 19, 2017. The Notice of Claim stated "[a]s an employer of this claimant within the past 18 months from the effective date of claim, your account may receive charges based upon wages you have paid this claimant unless you provide Iowa Workforce Development with information justifying relief from such charges." The employer did receive the Notice of Claim and filed its protest by fax on September 29, 2017.

A fact-finding interview was held on September 29, 2017. Employer's representative Susan Mood was called for the fact-finding interview and a message was left with appeal rights. An unemployment insurance decision was mailed to the employer on or about October 2, 2017 (reference 01) which found that the claimant was eligible for benefits and the employer's account may be charged for benefits paid. The decision stated "this decision becomes final unless an appeal is postmarked by 10/12/17, or received by Iowa Workforce Development Appeal Section by that date." The employer did not file an appeal of the decision before October 12, 2017.

The employer then received the Statement of Charges mailed February 9, 2018, for the fourth quarter of 2017. The employer filed its appeal of that Statement of Charges on March 14, 2018, which was not within thirty days of February 9, 2018.

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

For the reasons that follow, the administrative law judge concludes as follows:

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

In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d. 373 (Iowa 1979).

In this case, the employer received a Notice of Claim and filed a timely protest. A fact-finding interview was held and a decision allowing benefits was mailed to the employer on or about October 2, 2017 (reference 01). No appeal was filed by the employer from the decision allowing benefits before the appeal deadline of October 12, 2017. The employer provided no credible evidence that it did not receive the October 2, 2017 (reference 01) decision or that the failure to file a timely appeal was due to any Agency error or misinformation or delay or other action on the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the appeal.

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.

(emphasis added).

Because the employer did receive notice as provided in section 96.6(2) of the allowance of benefits to an individual, it may not now file an appeal to the Statement of Charges. An employer is only allowed to appeal to the department for a hearing to determine the eligibility of the individual to receive benefits if they were not previously notified pursuant to Iowa Code § 96.6(2) of the allowance of benefits. In this case, the employer did receive the Notice of Claim. As such, the conditions for appealing the Statement of Charges under Iowa Code § 96.7(2)a(6) have not been met.

**DECISION:**

The February 9, 2018 Statement of Charges for the fourth quarter of 2017, is affirmed. The employer has not met the conditions for appealing the Statement of Charges under Iowa Code § 96.7(2)a(6). The charges for the fourth quarter of 2017 shall remain in full force and effect.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs