

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRYAN L TERRY
Claimant

WINNEBAGO INDUSTRIES
Employer

APPEAL 17A-UI-12446-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/03/16
Claimant: Respondent (4)**

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

STATEMENT OF THE CASE:

Winnebago Industries (employer) filed an appeal from the Statement of Charges dated November 9, 2017, for the third quarter of 2017. A hearing was held on December 21, 2017, pursuant to due notice. Bryan L. Terry (claimant) did not respond to the hearing notice and did not participate. The employer participated through Human Resources Supervisor Susan Gardner. The Employer's Exhibits 1 through 4, 6, and 7 were admitted.¹ Department's Exhibits D1 and D2 were admitted.

ISSUES:

Was the employer's protest timely?

Was 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 claimant filed his claim for benefits the week of January 3, 2016 due to a temporary layoff. The employer received the Notice of Claim but did not protest the claimant's receipt of benefits. The employer received its Statement of Charges for the second quarter of 2016 and realized it was still being charged for the claimant's benefits; however, the claimant had been recalled to work after the two-week layoff in January. The employer provided notice to Iowa Workforce Development (IWD) that the claimant was still employed and earning wages. The claimant's claim was audited by the Investigations and Recovery Unit. The investigators determined the claimant had been fraudulently claiming benefits and was required to repay those benefits. The employer's account was credited the entire amount of benefits received by the claimant on its Statement of Charges for its fourth quarter of 2016.

¹ The employer's proposed Exhibit 5, a Statement of Charges dated February 9, 2017, was removed from the file and shredded as it contained names and social security numbers of other employees and was duplicative of a document admitted as part of Department's Exhibit D2 which had the sensitive information redacted.

A Statement of Charges dated November 9, 2017 for the third quarter of 2017 was mailed to the employer's last known address. The Statement of Charges included charges of \$2,340.25 for the claimant for the benefit year effective January 3, 2016. This was the first notice the employer had that it was being charged for benefits for the claimant for that claim year. The employer filed its appeal to the Statement of Charges on December 4, 2017.

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 employer's account should be credited for the erroneous charges on its account.

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 employer filed its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because it did not have prior notice that its account was being charged for the benefits claimed by the claimant for the claim year effective January 3, 2016. The employer's appeal of that Statement within thirty days is timely. The claimant was not entitled to the benefits for which he filed effective January 3, 2016 as he was fraudulently claiming benefits while working. The employer's next Statement of Charges shall be credited \$2,340.25 for erroneous charges for the claimant's benefit year effective January 3, 2016

DECISION:

The November 9, 2017, Statement of Charges for the third quarter of 2017 is modified in favor of the appellant and will be reflected in a credit to the employer's account on the next Statement of Charges. The employer has filed a timely appeal from that Statement of Charges, as it was the first notice it received that it was being charged for the benefits to the claimant.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn