

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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

JOSEPH G EGELAND
Claimant

APPEAL NO: 19A-UI-06654-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

NEUMANN BROTHERS INC
Employer

OC: 03/10/19
Claimant: Respondent (1-R)

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the August 9, 2019, Statement of Charges which listed benefit charge information for the second quarter of 2019. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on September 17, 2019. The claimant participated in the hearing. Tami Wingert, Vice-President of Finance, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the employer's protest and appeal from the Statement of Charges are timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant began his full-time employment as a carpenter foreman May 14, 2007, and was separated from this employment March 8, 2019. A notice of claim was mailed to the employer's address of record on March 12, 2019, regarding the claimant's claim for benefits with an effective date of March 10, 2019.

The notice of claim stated, "as an employer of this claimant within the last 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. Any benefits paid may result in a rate increase to your account." The employer was also notified that its account was potentially subject to \$12,142.00 in charges unless it furnished detailed information justifying relief from charges on the notice of claim.

The employer received that notice prior to the due date and filed a timely response that was received by Iowa Workforce Development ("IWD") March 14, 2019. The employer responded to the notice of claim stating that it was not protesting this claim. The notice of non-protest was certified correct by Tami Wingert and dated March 14, 2019.

On August 9, 2019, IWD sent the employer a second quarter 2019 statement of benefit charges notifying the employer that the claimant received \$4,670.00 in benefits charged to the employer's account for the quarter ending June 30, 2019. The notice was sent to the employer's address of record and was received by the employer. The employer filed an appeal to the statement of charges August 15, 2019.

The claimant is receiving a pension. The issue of whether the pension is deductible from benefits has not yet been heard or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits for claimant's claim effective March 10, 2019. For the reasons that follow, the administrative law judge concludes that it did not.

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states that an appeal must be filed within ten days after the date the decision was mailed to the parties. 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).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The employer filed a protest within the time period prescribed by Iowa Code section 96.6(2). However, the employer specifically responded to the notice of claim that it was *not* protesting the claim. It was not until the employer filed an appeal to the statement of charges on August 15, 2019, that IWD was first notified that the employer was protesting charges to its account.

The result in this case is reinforced by Iowa Code section 96.7(2)a(6), which states as follows:

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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 section 96.6(2) of the notice of claim. In this case, the employer did receive the notice of claim and responded that it was not protesting. As such, the conditions for appealing the statement of charges under Iowa Code section 96.7(2)a(6) have not been met.

The issue of the deductibility of the claimant's pension is remanded to the Benefits Bureau for an initial investigation and determination.

DECISION:

The employer has failed to file a timely protest and has not met the conditions for appealing the statement of charges under Iowa Code section 96.7(2)a(6). The charges for the second quarter of 2019 shall remain in full force and effect. The issue of the deductibility of the claimant's pension is remanded to the Benefits Bureau for an initial investigation and determination.

Julie Elder
Administrative Law Judge

Decision Dated and Mailed

je/scn