

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

TREVER J COXWORTH
Claimant

AGRI SERVICES OF NORTHERN IOWA
Employer

APPEAL 19A-UI-06463-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/23/18
Claimant: Respondent (1/R)

Section 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the statement of charges for the second quarter of 2019, reference 01. After due notice was issued, a hearing was held by telephone conference call on September 9, 2019. The claimant did not participate. The employer participated by Stacy Nachreiner. Department's Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative record, including fact-finding documents.

ISSUE:

The issue is whether the employer's protest is timely and whether its protest of the statement of charges is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant established a claim for unemployment insurance benefits effective December 23, 2018, after he was laid off.

The claimant's Notice of Wage Transfer was mailed to the employer's address of record, a payroll processing company, on December 28, 2018. On December 23, 2018, the employer started processing its payroll in house. The Notice of Wage Transfer was not forwarded from the employer's address of record to its physical address. The notice of wage transfer contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date.

The employer received the Statement of Charges mailed August 9, 2019, for the second quarter of 2019. The employer appealed the Notice of Wage Transfer and Statement of Charges on August 13, 2019.

Since the claimant's lay off, the employer has offered the claimant work.

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such 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 held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that 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 that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has not shown any good cause for not complying with the jurisdictional time limit. Therefore, the administrative law judge is without jurisdiction to entertain any appeal regarding the separation from employment.

The administrative law judge concludes that employer has failed to file a timely protest within the time period prescribed by the Iowa Employment Security Law. *The delay was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 4.35(2)*. The administrative law judge further concludes that the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

With regard to the timeliness of the employer's appeal of the statement of charges, the employer did receive and appeal the statement of charges within the time period allowed by law. Consequently, its appeal of the statement of charges is considered timely.

The issue of whether the claimant refused suitable work is remanded for determination.

DECISION:

The reference 01, statement of charges for the second quarter of 2019, is affirmed. The employer did not file a timely protest. It did file a timely appeal to the statement of charges.

The issue of whether the claimant refused suitable work is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/scn