

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KEALY A CLEVELAND**  
Claimant

**APPEAL 19A-UI-04135-LJ-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**STATE FARM INSURANCE**  
Employer

**OC: 02/10/19**  
**Claimant: Respondent (1)**

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:**

The employer filed an appeal from the Statement of Charges dated May 9, 2019, for the first quarter of 2019. A hearing was scheduled and held on June 13, 2019, pursuant to due notice. Claimant Kealy A. Cleveland did not register a telephone number at which to be reached and did not participate in the hearing. Employer State Farm Insurance participated through Pat Brown, Agent; and witness Amanda Leaf.

**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 Notice of Claim was mailed to the employer's address of record on February 15, 2019. The employer received this notice within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of February 25, 2019. The employer consciously chose not to file a protest response. Brown explained that claimant is a single mother with two children, and she did not feel it was appropriate to protest claimant's receipt of unemployment insurance benefits.

Subsequently, the employer received the May 9, 2019, Statement of Charges. Brown was confused by this document, as it stated that claimant's claim date was February 10, 2019, though she was not separated from employment until February 14, 2019. Therefore, she filed an appeal to the Statement of Charges on May 15, 2019.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely Statement of Protest.

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.

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. Iowa Dep't of Job Serv.*, 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.

Iowa Admin. Code r. 871-24.35(2) provides:

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, Brown admits she received the Notice of Claim in a timely manner. Rather than filing a protest, Brown elected not to protest claimant's claim for unemployment insurance benefits, due to her extenuating life circumstances. While the employer may certainly elect to not protest any claims it wants, once that election has been made the employer cannot later

change its mind and appeal the Statement of Charges. This would be giving the employer an unfair second bite at the apple. The evidence shows the employer willfully and intentionally did not file a timely protest. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the Statement of Charges or authority to remand for a fact-finding interview. Iowa Code § 96.6(2).

**DECISION:**

The May 9, 2019, Statement of Charges for the first quarter of 2019 is affirmed. The employer failed to file a timely Statement of Protest in response to the Notice of Claim.

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Decision Dated and Mailed

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