

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**VICKIE L TERPSTRA**  
Claimant

**DM CONVENTION L/VIS BUR INC**  
Employer

**APPEAL 17A-UI-11782-CL-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/10/16**  
**Claimant: Respondent (1)**

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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 for the third quarter of 2017 that was mailed on November 9, 2017. A hearing was held on December 7, 2017. The parties were properly notified about the hearing. Claimant participated. Employer participated through vice president of finance and administration Nancy Goode and director of finance Shannon Winters.

**ISSUES:**

Is the employer's protest timely?  
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: Employer formerly had a business relationship with Merit Resources in which Merit Resources handled employer's unemployment insurance claims. Employer ended that relationship in December 2015, but neglected to change its address of record with the agency.

Claimant filed a claim for unemployment insurance benefits effective July 10, 2016. A notice of claim was sent to employer, in care of Merit Resources, on July 12, 2016. Merit Resources forwarded the notice of claim to employer and employer did not respond. Thus, claimant was allowed benefits.

Statements of charges including charges for the third quarter of 2016 were mailed to employer, in care of Merit Resources, on November 9, 2016. It included charges for claimant's benefits. Merit Resources forwarded the charges to employer and employer did not file an appeal.

On July 9, 2017, claimant filed a new claim for benefits. A notice of claim was mailed to employer, in care of Merit Resources, on July 12, 2017. Merit Resources sent the notice of claim to employer and employer responded in a timely manner. A decision was issued on July 24, 2017, finding claimant had earned ten times her weekly benefit amount since

separating with employer and therefore allowing benefits and not charging employer for benefits paid on the 2017 claim.

On August 9, 2017, a Statement of Charges was mailed to employer, in care of Merit Resources, for the second quarter of 2017. It included charges for claimant for the 2016 benefit year. Merit Resources forwarded the mail to employer. Employer did not file an appeal. Sometime thereafter, employer finally changed its address of record with the agency.

On November 9, 2017, a Statement of Charges for the third quarter of 2017 was mailed directly to employer. It included charges for claimant during the 2016 benefit year. Employer filed an appeal on November 13, 2017.

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

As a preliminary matter, I do not find credible employer's testimony that Merit Resources did not forward all mail associated with claimant to employer. First, employer has engaged in a pattern of neglect in regard to its unemployment insurance matters, failing to change its address of the record with the agency for a period of almost two years even though by its own admission it knew at least by July 2017 that its mail was still being sent to Merit Resources. Second, I do not find it credible that over those two years, Merit Resources would choose to send to employer only one piece of mail pertaining to claimant's unemployment claim but would fail to forward all others. Instead, I find employer received the notices of claim and statements of charges from Merit Resources but neglected to act in a timely manner.

The administrative law judge concludes that employer has failed to protest response within the time period prescribed by the Iowa Employment Security 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.

In this case, employer failed to file a protest on claimant's 2016 claim. The failure was not due to any *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-4.35(2). No other good cause reason has been established for the failure. The administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990). Therefore, benefits are allowed to claimant for the 2016 claim year and employer can be charged for those benefits.

Furthermore, the employer is not entitled to relief based on its appeal of the Statement of Charges as the employer had prior notice of the claim.

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.

Even if employer did not have prior notice of the claim, it received two Statements of Charges prior to the Statement of Charges at issue and failed to file an appeal. Therefore, the employer's appeal to the most recent Statement of Charges is not considered timely.

**DECISION:**

The November 9, 2017, Statement of Charges is affirmed. The employer had prior notice of the claim and did not file a timely appeal from the Statements of Charges. The charges shall remain in full force and effect. Benefits are allowed.

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Christine A. Louis  
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Decision Dated and Mailed

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