

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**TIMOTHY M WILLIAMS**  
Claimant

**CV3 PIZZA LLC**  
Employer

**APPEAL 19A-UI-06831-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/06/19  
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:**

On August 27, 2019, CV3 Pizza, LLC (employer) filed an appeal from the statement of charges dated August 9, 2019, for the second quarter of 2019. A hearing was held on September 20, 2019, pursuant to due notice. Timothy M. Williams (claimant) did not respond to the hearing notice and did not participate. The employer participated through Owner Justin Buck. The administrative law judge took official notice of the notice of claim and protest; the unemployment insurance decision dated February 6, 2019, reference 04; the administrative law judge's decision issued February 28, 2019 for appeal number 19A-UI-01244-SC-T; and, the statement of charges dated May 9, 2019 for the first quarter of 2019.

**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 separated from employment on August 4, 2018 and filed his claim for benefits effective January 6, 2019. The notice of claim was mailed to the employer's address of record on January 9. The employer does not know when it was received as there are two locations. Additionally, the managers will sometimes gather the mail and not deliver it to the owner in a timely fashion. The notice of claim contained a warning that the protest must be returned by January 22. The employer filed its protest on February 2.

On February 6, an unemployment insurance decision, reference 04, was mailed to the employer. The employer timely appealed the decision. A notice of appeal and telephone hearing was mailed to both parties for a hearing scheduled on February 28 at 9:00 a.m. The employer does not know if it received the notice. The employer did receive the administrative law judge's decision issued February 28 dismissing the appeal because it failed to participate in the hearing. The employer did not appeal that decision to the Employment Appeal Board as instructed on the first page of the decision.

On May 9, a statement of charges for the first quarter of 2019 was mailed to the employer. The employer does not know if it received that document. The employer received the statement of charges mailed August 9 for the second quarter of 2019. On August 27, the employer appealed that statement of charges.

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

For the reasons that follow, the administrative law judge concludes the employer did not timely file its appeal to the statement of charges.

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. [Emphasis added.]

Iowa Admin. Code r. 871-26.4 provides, in relevant part:

2. An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp after the decision was mailed to the party at its last-known address and shall state the following:

- a. The name, address and social security number of the claimant;
- b. A reference to the decision from which appeal is taken; and,
- c. The grounds upon which the appeal is based.

3. Notwithstanding the provisions of subrule 26.4(2), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 30 days from the mailing date of the quarterly statement of benefit charges.

4. Also notwithstanding the provisions of subrule 26.4(2), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 15 days of the mailing date of the quarterly billing of benefit charges.

An appeal to the statement of charges is only appropriate and timely when it is the first notice the employer had of the claimant's claim of benefits. Iowa Code section 96.7(2)a(6). In this case, the employer had notice of the claim and notice that it did not file a timely appeal prior to the issuance of the statement of charges on August 9 for the second quarter of 2019. Therefore, the appeal from the second quarter statement of charges is not timely as this was not the employer's first notice of the claimant's claim for benefits. The statement of charges is correct.

**DECISION:**

The August 9, 2019, statement of charges for the second quarter of 2019 is affirmed. The employer did not timely file an appeal from the first notification it had of the claimant's claim for benefits.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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