

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ZACHARY SMITH
Claimant

WINCO TRANSPORT LLC
Employer

APPEAL 17A-UI-04101-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/07/16
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

Winco Transport LLC (employer) filed an appeal from the Statement of Charges dated February 9, 2017. A hearing was scheduled and held on May 8, 2017, pursuant to due notice. Zachary Smith (claimant) did not respond to the hearing notice and did not participate. The employer participated through President Patrick Windley. Official notice was taken of the administrative record.

ISSUE:

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: The notice of claim was mailed to the employer's address of record on December 12, 2016. The employer did not receive that notice. The first notice of the claimant's claim for benefits was the receipt of the Statement of Charges mailed February 9, 2017, for the 4th quarter of 2016. The employer filed its appeal of that Statement of Charges on April 12, 2017, which is beyond the thirty-day appeal deadline. The employer's address is that of one of its clients. The employer was having difficulty in February 2017 receiving its mail because of the client. Additionally, the employer received the statement of charges a few weeks prior to sending in its appeal, because it was set aside and not reviewed.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the employer's protest and appeal to the statement of charges is not timely.

Iowa Code § 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 § 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.

The purpose of allowing the appeal to the Statement of Charges is so any employer who did not receive the Notice of Claim may have another chance to protest the claimant's receipt of benefits. Iowa Code § 96.7(2)a(6). The administrative law judge concludes that the employer did not file its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law. The employer did not file appeal within thirty days of the mailing date.

DECISION:

The February 9, 2017, Statement of Charges is affirmed. The employer did not file a timely appeal from the 4th quarter 2016 Statement of Charges. The charges shall remain in full force and effect. Benefits are allowed.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn