

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JERRY L BLENNER**  
Claimant

**APPEAL 19A-UI-09405-AD-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**VALLEY VETERINARY CENTER PC**  
Employer

**OC: 12/31/17  
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  
Iowa Admin. Code r. 871-26.4(3) – Appeal from the Statement of Charges

**STATEMENT OF THE CASE:**

On November 25, 2019, Valley Veterinary Center PC (employer) filed an appeal from the Statement of Charges dated and mailed August 9, 2019, for the quarter ending June 30, 2019.

A hearing was scheduled and held on December 23, 2019, following due notice. Jerry Blenner (claimant) participated personally. Employer participated through veterinarian/owner Jared Bruhn.

Employer's Exhibits 1 and 2 were admitted. Official notice was taken of the administrative record.

**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:

Claimant separated from employment with Anthon Veterinary Clinic around the beginning of 2018, when that business closed. A Notice of Claim was mailed to Anthon Veterinary clinic on January 9, 2018, notifying it that claimant had filed a claim for unemployment insurance benefits. Employer did not receive this notice.

Employer, also a veterinary clinic, began leasing the space Anthon Veterinary Clinic was in on April 1, 2018. Employer continued to lease the space until January 1, 2019. It purchased the real estate and some items from Anthon Veterinary Clinic at that time.

On September 6, 2018, the IWD Tax Bureau mailed a decision to employer at its correct address, indicating employer had acquired the business of Anthon Veterinary Clinic LLC effective April 1, 2018. The decision notified employer that it must appeal within 30 days. No appeal was filed. Employer does not recall receiving this decision.

Statements of Charges were mailed to employer at its correct address on November 9, 2018; February 8, 2019; May 9, 2019; and August 9, 2019. These statements all indicated benefits had been paid to claimant and charged to employer's account. Those statements advised employer that if it had not previously received an initial Notice of Claim and wished to appeal claimant's eligibility for benefits, it may do so by filing an appeal within 30 days of receipt of the Statement of Charges. Employer only recalls receiving the May 9, 2019 Statement of Charges.

The employer filed this appeal on November 25, 2019, a duration of 108 days from the mailing of the most recent Statement of Charges. Employer is protesting the claim on the basis that claimant was not employed by employer.

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

For the reasons that follow, the administrative law judge concludes the employer failed to file a timely appeal from 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.

Pursuant to rules Iowa Admin. Code r. 871- 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). The postage meter mark on the last day for filing does not perfect a timely appeal if the postmark affixed by the United States Postal Service is beyond the filing date. *Pepsi-Cola Bottling Company of Cedar Rapids v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

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 an appeal of the Statement of Charges within thirty days of the mailing date.

As noted above, an employer who has not received a notice of claim – as employer did not here – can still appeal for a hearing to determine benefit eligibility. However, it must do so within 30 days of the mailing of the quarterly statement of charges. If employer had wished to appeal, it

should have done so within 30 days of the receipt of the Statement of Charges mailed on November 9, 2018.

The administrative law judge notes employer does not agree with the September 6, 2018 IWD Tax Bureau decision that employer had acquired the business of Anthon Veterinary Clinic LLC effective April 1, 2018. However, employer did not appeal that decision within 30 days, and the administrative law judge has no jurisdiction over that matter. The administrative law judge also notes employer does not believe it is liable for unemployment benefits as related to claimant, as claimant was never employed by employer. However, generally speaking, when a business is acquired, both its assets and its liabilities are acquired.

**DECISION:**

The August 9, 2019 Statement of Charges for the quarter ending June 30, 2019 is affirmed. The employer has failed to file a timely appeal from that Statement of Charges.

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Decision Dated and Mailed

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