

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JERRON L ARAGON
Claimant

APPEAL 20A-UI-01529-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

AARON'S LAWN CARE & LANDSCAPING
Employer

**OC: 12/09/18
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timely 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 February 7, 2020, which listed charge information for the fourth quarter of 2019. Due notice was issued and a hearing was held on March 6, 2020. Claimant participated personally. Employer participated through witness Sarah Finch. Department's Exhibit D1 was admitted. The administrative law judge took official notice of the claimant's and employer's unemployment insurance benefits records.

ISSUES:

Did the employer file a timely protest?
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 claimant filed an original claim for benefits with an effective date of December 9, 2018. His claim was filed in Minnesota. His claim expired on December 8, 2019.

A notice of wage transfer was mailed to the employer's correct address of record on December 11, 2018. See Exhibit D1. The notice of wage transfer read "The claimant named [redacted] has filed a combined wage claim for unemployment insurance benefits in the "Transferred To" (state named) and has requested the Iowa Unemployment Insurance Division to transfer previously reported earnings with your company during the above base period for combining under their law which we have done." See Exhibit D1. The base period listed in the notice of wage transfer is October 1, 2017 through September 30, 2018. See Exhibit D1. The notice of wage transfer further states "Please note that your Iowa account may be charged in the future unless this form is returned to the address above, giving detailed information concerning this claimant's separation from your employment. Your response must be postmarked or received not later than ten days from the date this notice was mailed to you. If the information justifies relief from charges in accordance with Iowa law, your account will not be charged." See Exhibit D1. There is space on the form for the employer to provide information about why it protests charges to the account. See Exhibit D1. Ms. Finch does not remember receiving the notice of

wage transfer but there are several employees that are laid off during that time period, resulting in a significant amount of paperwork sent to Ms. Finch.

The administrative records establish that the statement of charges for the third quarter of 2019 was mailed to the employer on November 8, 2019. That statement of charges lists charges to the employer's account of \$214.47 for the claimant. No appeal from the third quarter statement of charges was filed by the employer.

The statement of charges for the fourth quarter of 2019 was mailed to the employer on February 7, 2020 and it listed charge information for this claimant in the amount of \$2,335.05. The employer filed an appeal to this February 7, 2020 statement of charges on February 10, 2020.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not file a timely protest to the notice of wage transfer, or the previous statement of charges, and as such, the conditions for appealing the February 7, 2020 statement of charges have not been met.

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 of charges to the employer's account after notification of the filing of the claim and wage transfer has been mailed.

The employer did not present credible evidence that it failed to receive the notice of wage transfer mailed to it on December 11, 2018. The employer further failed to file an appeal to the November 8, 2019 statement of charges that listed charge information for this claimant during the third quarter of 2019.

Because the employer failed to complete and timely return the protest to Iowa Workforce Development within ten days from the date of the notice, it has failed to file a timely protest. Further, the employer failed to file an appeal to the previous statement of charges listing charge information for this claimant in the third quarter of 2019. If an employer fails to file a timely protest, Iowa Code § 96.7(2)a(6) is not applicable, given the fact that this February 7, 2020 statement of charges was not the first notification the employer received regarding the allowance 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).

An employer is only allowed to appeal the statement of charges if it was not previously notified pursuant to Iowa Code § 96.6(2) of the allowance of benefits. In this case, the employer was previously notified of the claim when the notice of wage transfer was mailed to it on December 11, 2018 and again notified when the third quarter statement of charges was mailed to it on November 8, 2019. As such, the conditions for appealing the February 7, 2020 statement of charges for the fourth quarter of 2019 under Iowa Code § 96.7(2)a(6) have not been met. The statement of charges dated February 7, 2020 is affirmed.

DECISION:

The employer failed to file a timely protest. The conditions for appealing the statement of charges have not been met. The February 7, 2020 statement of charges for the fourth quarter of 2019 is affirmed.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/scn