

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARY F LUEDTKE

Claimant

CATFISH BEND CASINOS II LLC

Employer

APPEAL 20A-UI-01450-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/16/19

Claimant: Respondent (1)

Iowa Code § 96.6(2) – Filing – Timely protest

Iowa Code § 96.7(2)A(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

Employer filed an appeal from the Statement of Charges dated February 7, 2020 for the fourth quarter of 2019. The parties were properly notified of the hearing. A telephone hearing was held on March 5, 2020, at 8:05 a.m. Claimant did not participate. Employer participated through Steve Morley, Director of Human Resources. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether employer's protest is timely.

Whether employer's appeal from the statement of charges is timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed her claim for benefits effective June 16, 2019 and reopened her claim effective December 1, 2019. The Notice of Claim was sent to employer electronically through the State Information Data Exchange System (SIDES) on June 21, 2019. The notice was sent to the correct email address. Employer does not recall whether it received the Notice of Claim. Employer did not file a protest. Employer received the Statement of Charges mailed November 8, 2019 for the third quarter of 2019, which included a charge for claimant. Employer received the Statement of Charges mailed February 7, 2020 for the fourth quarter of 2019, which also included a charge for claimant. Employer appealed both Statements of Charges via facsimile on February 17, 2020. Employer is protesting the claim on the basis that claimant's employment with Catfish Bend Casino ended on September 18, 2018 when claimant resigned to take other employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's appeal from the Statement of Charges is untimely.

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. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the Iowa Supreme 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 after notification of the filing of the claim has been mailed.

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.

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.

Employer received the Notice of Claim via SIDES on June 21, 2019. Employer did not protest the Notice of Claim. Employer received a Statement of Charges mailed November 8, 2019 for the third quarter of 2019 showing that claimant was receiving benefits. Employer received a Statement of Charges mailed February 7, 2020 for the fourth quarter of 2019 showing that claimant was receiving benefits. Employer filed its appeal within 30 days of the second Statement of Charges; but this was not employer's first notification that claimant was receiving benefits. Therefore, employer did not timely protest the claimant's receipt of benefits.

DECISION:

Employer did not timely protest the claimant's receipt of benefits as it did not appeal its first notice that claimant was receiving benefits. The Statement of Charges mailed February 7, 2020 for fourth quarter 2019 is affirmed. The charges shall remain in full force and effect.

Adrienne C. Williamson
Administrative Law Judge
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Decision Dated and Mailed

acw/scn