

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANET L BETTERTON
Claimant

DES MOINES HEALTH CENTER INC
Employer

APPEAL 16A-UI-05251-DL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/17/15
Claimant: Respondent (2-R)

Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the May 5, 2016, (reference 08) unemployment insurance decision that allowed benefits based upon finding the employer's protest untimely. The parties were properly notified about the hearing. A telephone hearing was held on May 19, 2016. Claimant Janet Betterton f/k/a Jessen participated. Employer participated through executive director Erica Nuss. The administrative law judge took official notice of the administrative record, including fact-finding documents.

ISSUE:

Is the employer's protest 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 at the address of record on June 17, 2015, and received within the protest period. The employer executed and mailed its protest on June 22, 2015. The protest was not received at IWD. The employer's next notice of potential liability or action on the claim was the statement of charges mailed April 15, 2016. The employer filed its appeal from that statement on May 9, 2016. The employer is not a base-period employer in the March 16, 2014, claim year. Claimant's separation date was December 10, 2014. She moved to Wisconsin, worked part-time and is uncertain if she has requalified for benefits before filing a new claim effective May 17, 2015, when this employer became a base-period employer.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely appeal from the Statement of Charges.

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 administrative law judge concludes that the employer filed its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because its timely protest was not received at IWD. The employer's appeal of that Statement within 30 days is timely. The issues of the reason for the separation and requalification have not been addressed so are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The April 15, 2016, Statement of Charges for the first quarter of 2015 is reversed. The employer has filed a timely appeal from that Statement of Charges, as the protest from the Notice of Claim was not received at IWD.

REMAND:

The separation and requalification issues are remanded to the Benefits Bureau of Iowa Workforce Development for a fact-finding interview and unemployment insurance decision as it is unclear whether or not claimant has requalified for benefits.

Dévon M. Lewis
Administrative Law Judge

Decision Dated and Mailed

dml/pjs