

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LISA A KING

Claimant

APPEAL 19A-UI-03915-NM-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MANN'S ENTERPRISES LLC

Employer

OC: 01/27/19

Claimant: Respondent (1R)

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 May 9, 2019, which listed charge information for the first quarter of 2019. Due notice was issued and a hearing was held on June 6, 2019. Claimant participated and testified. Employer participated through witness Lori Barlow. Department's Exhibit D-1 through D-3 were received into evidence.

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:

Employer signed up to receive electronic notice of claims through the State Information Data Exchange System ("SIDES system") on August 17, 2017. Employer provided Iowa Workforce Development with Barlows' email address "lori.barlow@us.stores.mcd.com" as the exclusive contact to receive notices of claims. A notice of claim was emailed to the employer's email address of record on January 28, 2019 regarding claimant's initial claim for unemployment insurance benefits which was effective January 27, 2019. A response was due by February 8, 2019. No response was filed; however, the employer did not receive the email from Iowa Workforce Development.

The employer experienced the same issue with its claims for the fourth quarter of 2018. Appeal hearings were held on those claims on March 1, 2019. The administrative law judge advised the employer to contact the SIDES administrator, which Barlow did that same day. The SIDES administrator worked with Barlow to try to identify the issue, including checking her junk mail folder, but the issue could not be identified. The SIDES administrator suggested Barlow give her an alternate email address to try. That email worked and the issue was resolved going forward.

The SIDES administrator also advised Barolow to logon to the SIDES account to check for outstanding claims. Barlow followed this advice and saw there were several notice of claims, for which it had not filed a response. The employer followed up in an email asking whether it should file its protest, even though it was past due. The employer was advised the protest would be marked as untimely and to wait until it received its Statement of Charges. The employer followed this advice. On May 9, 2019 a Statement of Charges for the first quarter of 2019 was mailed to the employer. The employer filed an appeal to the statement of charges on May 13, 2019.

REASONING AND CONCLUSIONS OF LAW:

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

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 after notification of the filing of the claim has been mailed. An exception exists to filing a response within ten days if there is credible evidence that the delay was due to agency error, misinformation or delay, or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). If the employer has failed to file a timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make any determination with respect to the nature of the claimant's separation from employment. See *Beardslee*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

In this case, the employer presented credible evidence that it did not receive the notice of claim emailed to it due to an unknown agency error. The employer first learned about the notice of claim on March 1, 2019. The employer was advised by an IWD representative not to file a protest, as the deadline had passed. The employer was further advised to wait until it received its first quarter statement of charges to appeal. The employer followed this advice. The administrative law judge concludes that the employer has shown good cause for failing to protest the claim by the prescribed deadline, therefore making the protest timely. The employer's appeal of the Statement of Charges within thirty days is timely.

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.

An employer is only allowed to appeal the statement of charges for a hearing to determine the eligibility of the individual to receive benefits if they were not previously notified pursuant to Iowa Code § 96.6(2) of the allowance of benefits. In this case, the employer was not previously notified of the claim because the notice of claim was never received by the employer due to agency error. Further, the employer has filed an appeal to the statement of charges within thirty days of the date of mailing of the statement of charges.

DECISION:

The conditions for appealing the statement of charges have been met. The May 9, 2019 statement of charges for the first quarter of 2019 is affirmed pending the investigation regarding the remanded issue.

REMAND:

The issue of whether the claimant's separation from this employer was disqualifying will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination, with notice and opportunity to be heard provided to both parties.

Nicole Merrill
Administrative Law Judge

Decision Dated and Mailed

nm/rvs