

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**MAHALIA J MCCULLUM**  
Claimant

**L A LEASING INC**  
Employer

**APPEAL 18A-UI-09157-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 04/23/17**  
**Claimant: Respondent (1R)**

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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 August 9, 2018, which listed charge information for the second quarter of 2018. Due notice was issued and a hearing was held on September 24, 2018. Claimant did not participate. Employer participated through witness Colleen McGuinty. The administrative law judge took official notice of the claimant'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:

Claimant filed an initial claim effective April 23, 2017. The claimant's administrative records establish that this was a combined wage claim. The claimant's administrative records further establish that no Notice of Wage Transfer was sent from Iowa Workforce Development to the employer. No initial determination regarding whether the employer's account should be charged for benefits paid was ever adjudicated.

The employer received a notice of claim from Illinois and protested the claim. The employer then received notification from Illinois that it was not the last employer or a chargeable employer regarding the claimant's claim for benefits.

**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 never received a Notice of Wage Transfer and opportunity to protest the claim. As such, the statement of charges was 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 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 by the State of Iowa of the claim because no Notice of Wage Transfer was mailed to it. 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 August 9, 2018 statement of charges for the second quarter of 2018 is affirmed pending the investigation and determination regarding the remanded issue.

**REMAND:**

The issue of whether the employer's account would be relieved of charges on an Iowa claim is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs