

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JEFFRY ALGER
Claimant

THE ANTHEM COMPANIES INC
Employer

APPEAL 17A-UI-10344-CL-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/16/17
Claimant: Respondent (2R)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(2)a(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

The employer filed a timely appeal from the October 3, 2017, (reference 01) unemployment insurance decision that found employer's protest untimely and allowed benefits. A hearing was scheduled and held on October 26, 2017, pursuant to due notice. Claimant participated. Employer participated through unemployment claims specialist Larry Porter. Employer's Exhibits 1 and 2 were received.

ISSUES:

Was the employer's protest timely?
Was 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 Notice of Claim was mailed to the employer's address of record on April 20, 2017. The employer filed a protest within ten days on May 1, 2017, via facsimile. Although the transmission sheet indicated the fax was successful, the agency did not receive the protest. The first notice the agency did not receive the protest was the receipt of the Statement of Charges mailed August 9, 2017 for the second quarter of 2017. The employer filed its appeal of that Statement of Charges on August 29, 2017. The issue of whether claimant's separation from employment disqualifies him from receiving unemployment insurance benefits has not yet been investigated or adjudicated at the claims level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely protest and appeal from 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.

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.

The employer received the notice of claim within the protest period but has established a legal excuse for filing its protest after the deadline. Iowa Admin. Code r. 871-24.35(2). When the Department allows employers to submit a protest by fax, the Department has the responsibility to make sure its equipment works properly and, in this case, did not. Based on the evidence, employer's protest should be accepted as timely. The administrative law judge further concludes employer's appeal of that Statement within thirty days is timely. The issue of whether claimant's separation from employment disqualifies him from receiving unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The October 3, 2017, (reference 01) unemployment insurance decision is reversed. The employer has filed a timely protest and a timely appeal from the August 9, 2017, Statement of Charges.

REMAND:

The issue of whether claimant's separation from employment disqualifies him from receiving unemployment insurance benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

Decision Dated and Mailed

cal/scn