

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KIMBERLY S HENNIGAR**  
Claimant

**OM SHREE YOGI LLC**  
Employer

**APPEAL 20A-UI-05515-AW-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 11/24/19**  
**Claimant: Respondent (1R)**

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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 May 8, 2020 for the first quarter of 2020. The parties were properly notified of the hearing. A telephone hearing was held on July 9, 2020, at 3:00 p.m. Claimant participated. Employer participated through Trina Thomas, Area Manager. 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 a claim for unemployment insurance benefits effective November 24, 2019. A Notice of Claim was mailed to employer at the incorrect address on December 3, 2019. Employer did not receive the Notice of Claim and, thus, did not submit a protest. A Statement of Charges was mailed to employer at the incorrect address on February 7, 2020 for the fourth quarter of 2019, which included a charge for claimant. Employer did not receive the Statement of Charges and, thus, did not file an appeal. A Statement of Charges was mailed to employer at the correct address on May 8, 2020 for the first quarter of 2020, which included a charge for claimant. Employer received the Statement of Charges. This was employer's first notice that claimant filed a claim for unemployment benefits. Employer filed an appeal of the Statement of Charges via facsimile on June 8, 2020. Employer is protesting the claim on the basis that claimant was still employed by employer for her regular hours when claimant filed her original claim for benefits. There has been no initial investigation and decision regarding claimant's partial unemployment or employer's chargeability.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes employer's protest is timely and employer's appeal from the statement of charges is timely.

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 Admin. Code r. 871-24.35(2) provides:

2. The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

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 filed its appeal of the Statement of Charges mailed May 8, 2020 for the first quarter of 2020 prior to the deadline. Employer did not receive the Notice of Claim or prior Statement of Charges. The May 8, 2020 Statement of Charges was employer's first notice of the claim. Therefore, employer's protest of the Notice of Claim and appeal of the Statements of Charges are timely.

The issues of whether claimant was partially unemployed and whether employer should be charged will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

**DECISION:**

Employer filed a timely protest of the Notice of Claim and a timely appeal of the Statement of Charges. The February 7, 2020 and May 8, 2020 Statements of Charges are affirmed pending determination of whether claimant was partially unemployed and whether employer should be charged for those benefits.

**REMAND:**

The issues of whether claimant was partially unemployed and whether OM Shree Yogi LLC (Account # 605079-000) should be charged are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



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Adrienne C. Williamson  
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July 21, 2020  
Decision Dated and Mailed

acw/mh