

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

**SHANE H OBERENDER**

Claimant

**APPEAL 17A-UI-03279-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ALLEMAN CAR CORNER LLC**

Employer

**OC: 11/20/16**

**Claimant: Respondent (2R)**

Iowa Code § 96.6(2) – Timeliness of Appeal

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 an appeal from the February 24, 2017, (reference 02) unemployment insurance decision that denied benefits concluding the employer filed an untimely protest.. The employer also filed an appeal from the Statement of Charges (reference 03) dated February 9, 2017 which is the issue for this case. The parties were properly notified about the hearing. A telephone hearing was held on April 18, 2017. The claimant participated personally. The employer participated through Sue Stevens, office manager. Steve Holland, owner, also participated. Department Exhibits D-1 through D-5 were admitted into evidence. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

**ISSUES:**

Is the employer's protest timely?

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: The employer has utilized and continues to use Harris and Company CPA for its unemployment vendor and address of record. This address has been a recognized address of record since 2013. The employer also operates using a mailing address of 1399 NE 142nd Ave, or PO Box 3, Alleman, Iowa 50007.

The notice of claim for this claimant was mailed on November 23, 2016 to the employer's address of record at its accountant's office. It is unknown when it was received by Harris and Company and the vendor representative/accountant, Cindy Boatwright, did not attend the hearing or offer a written statement regarding her receipt of any of the employer's mail. Customary practice is that Ms. Boatwright emails the employer when they need to respond to mail received at her location. The notice of claim contained a warning stating that a response was due on or postmarked by December 5, 2016. The employer reports a copy was mailed from the Alleman local post office on November 28, 2016, but no envelope was retained and the

agency did not receive a copy of the employer's response. It was resubmitted on February 21, 2017 (Department Exhibit D-1).

The employer submitted its appeal of that Statement of Charges on March 23, 2017, which is beyond the thirty-day appeal deadline. The statement of charges for fourth quarter of 2016 was mailed to the employer address of PO Box 3 Alleman, Iowa 50007 on February 9, 2017 (Department Exhibit D-2). The mail is checked daily by Mr. Holland daily at that address. It is unknown when the employer received the statement of charges but stated it attempted to fax its appeal to the statement of charges on February 21, 2017, to 515-725-2938. The employer believed the appeal had been timely submitted (Department Exhibit D-5), until it had follow up contact with IWD representative, Lisa Kolontar, who said no appeal had been received. It was then resubmitted on March 23, 2017 by email (Department Exhibit D-3).

### **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 it did receive the notice of claim indicating the claimant had filed a claim for benefits and did timely protest the claim (See Appeal 17A-UI-03273-JC-T).

The employer's appeal of that Statement within thirty days is timely. The credible evidence presented is that the appellant filed an appeal in a timely manner but it was not received. Immediately upon receipt of information to that effect, a second appeal was filed. Therefore, the appeal shall be accepted as timely. The issues of the reason for the separation and requalification are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The February 9, 2017, Statement of Charges (reference 03) for the fourth quarter of 2017 is reversed. The employer has filed a timely appeal from that Statement of Charges, as the Notice of Claim was timely protested.

**REMAND:** The issues of the reason for the separation and whether the claimant has requalified for benefits are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

---

Jennifer L. Beckman  
Administrative Law Judge

---

Decision Dated and Mailed

jlb/rvs