

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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**DANIEL D COUNTRYMAN**  
Claimant

**APPEAL 16A-UI-05436-JCT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**EMPIRE CONSTRUCTION & TRENCHING**  
Employer

**OC: 02/01/15  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the Statement of Charges dated May 9, 2016. A hearing was scheduled and held on May 31, 2016, pursuant to due notice. The claimant participated personally. The employer participated through Lisa Hayostek, bookkeeper. Department Exhibits D-1 through D-4 were received. The administrative law judge took official notice of the administrative record, including fact-finding documents. Based on the evidence, the arguments of the parties, 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 correct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The notice of claim reflecting an effective date of February 1, 2015, was mailed to the employer's address of record on February 6, 2015 (Department Exhibit D-3). The employer received that notice and responded "I am not protesting this claim" (Department Exhibit D-3) due to the claimant being laid off from work. The claimant returned to work and performed services for the employer until he permanently separated. The employer appealed the statement of charges it received dated May 9, 2016 (Department Exhibit D-2) which reflect the employer is charged for benefits obtained during his claim year with the claim date of February 1, 2015 (Department Exhibit D-2).

**REASONING AND CONCLUSIONS OF LAW:**

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 charges associated with the claim with an effective date February 1, 2015, are correct and stand because the employer opted not to protest the claim (Department Exhibit D-3) even though it received the claim. The employer had the opportunity to challenge the chargeability of the 2015 claim at the time of protest but chose not to do so. Therefore its appeal after receiving the statement of charges dated May 9, 2016 (Department Exhibit D-2) is untimely.

**DECISION:**

The May 9, 2016 Statement of Charges is affirmed. The employer did not file a timely appeal from the Statement of Charges. The charges shall remain in full force and effect.

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Jennifer L. Beckman  
Administrative Law Judge

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Decision Dated and Mailed

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