

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**GINA E RORMAN**  
Claimant

**AUNT MAUDES OF AMES LLC**  
Employer

**APPEAL 22A-UI-09898-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 03/22/20**  
**Claimant: Respondent (4)**

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Iowa Code § 96.6(2) – Timeliness of Protest  
Iowa Code § 96.7(2)A(6) – Statement of Charges

**STATEMENT OF THE CASE:**

On November 15, 2021, the employer filed an appeal from the statement of charges dated November 9, 2021 which listed charges for the third quarter ending September 30, 2021. A hearing was scheduled and held on May 9, 2022, pursuant to due notice. Claimant did not participate. Employer participated through witness Patrick Breen. Official notice was taken of the administrative record.

**ISSUES:**

Was the employer's protest to the notice of claim 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: Claimant filed a claim for unemployment insurance benefits with an effective date of March 22, 2020. This was a combined wage claim with a request for her Iowa wages to be transferred out to Minnesota. No notice of wage transfer was ever mailed to the employer until January 7, 2022. The employer faxed a response to the January 7, 2022 notice of wage transfer indicating that the claimant was initially laid off due to a COVID-19 related closure of the business and that she voluntarily quit to move out of the State of Iowa in June or July of 2020.

The employer received a statement of charges dated November 9, 2021 for the quarter ending September 30, 2021 that listed charges of \$247.45 regarding the claimant. This was the first notification that the employer received stating that the claimant was eligible for benefits and that its account would be subject to charges. The employer filed an appeal of the November 9, 2021 statement of charges on November 15, 2021. The employer intended to protest charges to its account because the layoff was COVID-19 related and claimant voluntarily quit after the initial COVID-19 related layoff. The administrative records establish that another Statement of Charges dated February 9, 2022 listed a credit for the amount of \$247.45 back to the employer's account.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant.

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

Date of submission and extension of time for payments and notices.

(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.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

Iowa Code § 96.6(2) addresses the timeliness of an appeal from a representative's decision and states that an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d. 373 (Iowa 1979). This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer.

The failure to file a timely protest in this case was due division error as no Notice of Wage Transfer was ever mailed to the employer until January 7, 2022, which under 871 IAC 24.35(2), would excuse the delay in filing the protest. The employer failed to file a protest within the time period prescribed by Iowa Code § 96.6(2) because it was never initially mailed a Notice of Wage Transfer.

Iowa Code section 96.7(2)a(6) provides:

2. Contribution rates based on benefit experience.

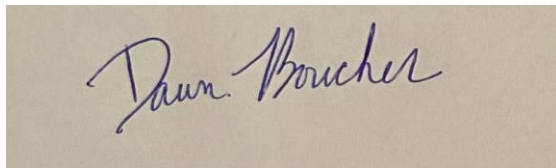
a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security 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 Code § 96.7(2)a(6) states that an employer who did not receive notice of the claim (or notice of wage transfer) may appeal to the department for a hearing to determine the eligibility of an individual to receive benefits and chargeability to its account. In this case, the first notice of the allowance of benefits to the claimant was the statement of charges for which the employer filed an appeal on November 15 2021.

The administrative law judge concludes that the employer filed its appeal of the statement of charges dated November 9, 2021 within the time period prescribed by the Iowa Employment Security Law because it did not receive any initial notice of wage transfer and its appeal to the November 9, 2021 statement of charges was timely. Administrative records establish that a credit was issued to the employer for these same charges in the Statement of Charges dated February 9, 2022. As such, it is unnecessary to remand any chargeability issues to the Benefits Bureau as the employer has already received a credit back to its account.

**DECISION:**

The November 9, 2021 statement of charges for the third quarter of 2021 is modified in favor of the appellant/employer. The employer has filed a timely appeal from the November 9, 2021 statement of charges and the charges on the account for this claimant have since been credited back to the employer's account.

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Dawn Boucher  
Administrative Law Judge

May 12, 2022  
Decision Dated and Mailed

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