

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL K DRAGO
Claimant

GREGORY MFG CO
Employer

APPEAL 21A-UI-02101-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

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

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:

On November 19, 2020, the employer filed an appeal from the November 9, 2020, Statement of Charges for the third quarter of 2020. A hearing was scheduled and held on February 26, 2021, pursuant to due notice. Claimant did not register for the hearing and did not participate. Employer participated through Bruce Widbin. Official notice was taken of the administrative record.

ISSUES:

Is 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: Claimant filed a claim for unemployment insurance benefits with an effective date of November 24, 2019. On November 26, 2019, Iowa Workforce Development mailed employer a notice of claim. The notice of claim listed a response deadline of December 6, 2019. Employer is unsure of whether it received or returned the notice of claim.

On August 7, 2020, Iowa Workforce Development mailed employer a statement of charges for the second quarter of 2020. Charges for claimant appeared on employer's statement of charges for the second quarter of 2020. Employer received the statement of charges, but did not file an appeal.

On November 9, 2020, Iowa Workforce Development mailed employer a statement of charges for the third quarter of 2020. On November 19, 2020, employer filed an appeal.

REASONING AND CONCLUSIONS OF LAW:

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 administrative law judge concludes that the employer failed to timely protest/appeal the benefits to the claimant because it did not timely appeal the statement of charges that was mailed on August 7, 2020, for the second quarter of 2020.

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely filed. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The November 9, 2020, statement of charges is affirmed. The employer did not file a timely appeal from the second quarter statement of charges in 2020, and therefore the appeal to third quarter statement of charges in 2020 is also untimely. Benefits are allowed, provided claimant is otherwise eligible. The charges shall remain in full force and effect.



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March 8, 2021
Decision Dated and Mailed

cal/lj