68-0157 (9-06) - 3091078 - EI

JOHN P SCIGLIANO
Claimant

APPEAL NO: 20A-UI-04823-JE-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SNT TRUCKING INC
Employer

**OC: 12/15/19
Claimant: Respondent (1R)**

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

STATEMENT OF THE CASE:

The employer filed a timely appeal from the May 8, 2020, Statement of Charges which listed benefit charge information for the first quarter of 2020. After due notice was issued, a hearing was held by telephone conference call before Administrative Law Judge Julie Elder on June 22, 2020. The claimant participated in the hearing. Todd Karr, General Manager, participated in the hearing on behalf of the employer. Department's Exhibit D-1 was admitted into evidence.

ISSUE:

The issues are whether the employer's protest is timely and whether its protest of the statement of charges is timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's notice of claim was mailed to the employer's address of record on December 17, 2019. The employer did not receive the decision. The first notice the employer received that the claimant made a claim for benefits was the receipt of the Statement of Charges mailed May 8, 2020, for the first quarter of 2020. The employer mailed its appeal of the Notice of Claim and Statement of Charges May 21, 2020, which was within thirty days. There are issues of the reason for the claimant's separation from employment that have not yet been investigated or adjudicated at the Claims level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did file a timely appeal to the statement of charges.

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

An exception exists to filing a response within ten days if there is credible evidence that the delay was due to agency error, misinformation or delay, or other action of the Unites States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). If the employer has failed to file a timely protest pursuant to Iowa Code section 96.6-2, the administrative law judge lacks jurisdiction to make any determination with respect to the nature of the claimant's separation from employment. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Company v. Employment Appeal Board*, 465 N.W.2d 674 (Iowa App. 1990).

In this case, the employer presented credible evidence that it did not receive the notice of claim mailed to it on December 17, 2019. As such, the statement of charges was the first notification the employer received regarding the allowance 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. (emphasis added).
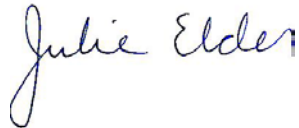
An employer is only allowed to appeal the statement of charges for a hearing to determine the eligibility of the individual to receive benefits if they were not previously notified pursuant to Iowa Code section 96.6-2 of the allowance of benefits. In this case, the employer was not previously notified of the claim because it did not receive the notice of claim. Furthermore, the employer has filed an appeal to the statement of charges within thirty days of the date of mailing of the statement of charges.

DECISION:

The conditions for appealing the statement of charges have been met. The May 8, 2020, statement of charges for the first quarter of 2020 is affirmed pending the investigation regarding the remanded issues.

REMAND:

The issues of whether the employer's account is chargeable for benefits due to the claimant's separation from employment and whether the claimant has requalified for benefits are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

_____
Julie Elder
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

je/scn