

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL J HOLMES
Claimant

SANITARY SERVICES INC
Employer

APPEAL 19A-UI-01119-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/03/17
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the statement of charges dated February 8, 2019, which listed charge information for the fourth quarter of 2018. Due notice was issued and a hearing was held on February 25, 2019. Claimant participated. Employer participated through witness Eric Lundell. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the employer file a timely protest?
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:

A notice of claim was mailed to the employer's correct address of record on December 8, 2017 regarding claimant's claim for unemployment insurance benefits which was effective December 3, 2017. The notice of claim read "...your account may receive charges based upon wages you have paid this claimant unless you provide Iowa Workforce Development with information justifying relief from such charges." The employer completed the statement of protest checking the box marked "I am NOT protesting this claim" and submitted the response to Iowa Workforce Development prior to the response deadline of December 18, 2017. No fact-finding interview regarding claimant's separation from employment was conducted because the employer did not protest the claim. The statement of charges for the fourth quarter of 2018 was mailed to the employer on February 8, 2019. The employer filed an appeal to the statement of charges on February 11, 2019.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not file a timely protest to the notice of claim and as such, the conditions for appealing the statement of charges have not been met.

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. Iowa Dep't of Job Serv.*, 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 United 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 § 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*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

In this case, the employer did not protest the claimant's claim for benefits. If an employer fails to file a timely protest, Iowa Code § 96.7(2)a(6) is not applicable, given the fact that the statement of charges was not 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 § 96.6(2) of the allowance of benefits. In this case, the employer was previously notified of the claim when the notice of claim was mailed to it and it failed to protest the claim. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met. The statement of charges dated February 8, 2019 is affirmed.

DECISION:

The employer failed to file a timely protest. The conditions for appealing the statement of charges have not been met. The February 8, 2019 statement of charges for the fourth quarter of 2018 is affirmed.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs