

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

NATALIE J PREWITT
Claimant

ELVERSON VASEY & ABBOTT LLP
Employer

APPEAL 16A-UI-13166-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/28/16
Claimant: Respondent (2)

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:

The employer filed an appeal from the Statement of Charges dated November 9, 2016 for the third quarter of 2016. A hearing was scheduled and held on January 4, 2017, pursuant to due notice. The claimant participated personally. The employer participated through Partner Todd Elverson. Claimant's Exhibits A through C were offered and received into the record. Employer's Exhibit 1 was offered and received into the record. Department's Exhibits D-1 through D-3 were received.

ISSUE:

Was the employer's protest or appeal from the statement of charges timely?
Is the Statement of Charges correct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for unemployment insurance benefits the week of August 28, 2016. The administrative record reflects that claimant has received unemployment benefits in the amount of \$1,704.00, since filing a claim with an effective date of August 28, 2016, for the 16 weeks ending December 17, 2016. A fact-finding interview was held on or about September 19, 2016. Both the claimant and Elverson participated. However, the employer had not received notice of the fact-finding interview and Elverson happened to be present in the office to take the fact-finder's phone call.

The same day, a decision was made finding the claimant ineligible for unemployment insurance benefits. The decision was mailed to the employer at an address on Court Avenue in Des Moines, Iowa. The employer has been located at Second Avenue in Des Moines, Iowa since July 2011. The following day, a second decision amending the first and finding the claimant eligible for benefits was mailed to the employer at the address on Court Avenue. The first letter decision that denied benefits was forwarded to the employer's address on Second Avenue. However, the second letter was not forwarded.

On November 9, 2016, a Statement of Charges was mailed to the employer's address on Second Avenue. The Statement of Charges stated the claimant had received benefits the prior quarter which were chargeable to the employer's account. Elverson contacted customer service to find out why the employer was being charged for benefits when the claimant had been disqualified. Customer Services contacted Kevin Irvine in Quality Control. Irvine audited the employer's account. On December 9, 2016, Elverson spoke to Irvine who informed him of the second decision finding the claimant eligible for benefits. Elverson asked for a copy of the decision which Irvine faxed to him. Elverson filed an appeal to the decision on the same day.

The unemployment insurance decision that allowed the claimant to receive unemployment insurance benefits has been reversed in a decision of the administrative law judge in appeal 16A-UI-13166-SC-T.

REASONING AND CONCLUSIONS OF LAW:

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 filed its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because it did not receive the decision which allowed the claimant to receive benefits. The employer's appeal of that Statement within thirty days is timely. As the decision allowing the claimant to receive benefits has been reversed, the Statement of Charges is not correct and is also reversed.

DECISION:

The November 9, 2016, Statement of Charges for the third quarter of 2016 is reversed. The employer has filed a timely appeal from that Statement of Charges, as the decision allowing the claimant benefits was not received.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

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