

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

COREY V MOSLEY
Claimant

ROSS HOLDINGS LLC
Employer

APPEAL 16A-UI-06376-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/23/14
Claimant: Respondent (4)

Iowa Code Chapter 96 – Requalification
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Ross Holdings, LLC (employer) filed a timely appeal from the June 3, 2016, (reference 08) unemployment insurance decision that found the protest untimely and allowed benefits to Corey V. Mosely (claimant). After due notice was issued, a hearing by telephone conference call was held on July 13, 2016. The claimant did not participate. The employer participated through Director of Operations Shannon Schmidt. Employer's Exhibit 1 was received. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record, including the fact-finding documents and the claimant's wage information.

ISSUES:

Is the employer's protest timely?

Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The notice of claim for this claimant was mailed to the employer's address of record on February 28, 2014. The employer did not receive the notice. The employer did not receive its statement of charges for 2014 or the first, second, and third quarter of 2015 as its mailing address in the Iowa Workforce Development (IWD) system was incorrect.

On November 19, 2015, Administrative Assistant Wendi Bjorheim contacted IWD on another matter. She learned the employer was not receiving its quarterly statement of charges. IWD then faxed Bjorheim copies of the statements of charges for 2015, but did not include the backside of the documents which explained the employer's appeal rights.

In December 2015, the employer received notice of its 2016 tax rate which included the employer's appeal rights. On December 23, 2015, Director of Operations Shannon Schmidt sent a formal appeal to the Tax Bureau regarding the employer's tax rate and the information contained in the statement of charges. The appeal was not sent to the IWD Appeals Bureau

and no hearing was scheduled for the appeal to the statement of charges. On June 3, 2016, the employer received the decision from IWD that it had not filed a timely protest to the claimant's claim for unemployment insurance benefits.

The claimant's weekly benefit amount for the claim with an original claim date of February 23, 2014 was \$403.00. His employment with the employer ended in the fourth quarter of 2012. He then earned \$11,908.00 working for subsequent employers in the first, second, and third quarters of 2013.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer filed a timely protest to the claimant's claim for unemployment insurance benefits.

Iowa Code § 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 § 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.]

The employer did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer also did not receive its statement of charges. Once the employer received copies of the statement of charges, it had notice of the claimant's claim. However, the employer was not notified of its appeal rights when it received the statement of charges. The employer then filed a timely appeal to its tax rate, when it was first provided notice of its appeal rights, and to the statement of charges. Therefore, the protest shall be accepted as timely.

The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The June 3, 2016, (reference 08) unemployment insurance decision is modified in favor of the employer. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs