

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

MASON D VANCE
Claimant

LOWES HOME CENTERS LLC
Employer

APPEAL NO. 19A-UI-02230-DG-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 08/05/18
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the Statement of Charges dated February 8, 2019. A hearing was scheduled and held on March 29, 2019, pursuant to due notice. The claimant did not participate. The employer participated through Jessica Ralston, Hearing Representative. Department Exhibit D-1 was received.

ISSUE:

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: The Statement of Charges was mailed to the employer's address of record on February 8, 2019, for the Fourth quarter of 2018. An appeal was sent by U.S. mail to the wrong address and received by that department on March 11, 2019. The employer was not able to provide a copy of the postmarked envelope or other proof of the mailing date. The employer appeal of the Statement of Charges was received by the appeals bureau on March 12, 2019 which is beyond the thirty-day appeal deadline.

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.

Pursuant to rules Iowa Admin. Code r. 871- 26.2(96)(1) and 871 IAC 24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. Iowa Dep't of Job Serv.*, 341 N.W.2d 52 (Iowa 1983). The postage meter mark on the last day for filing does not perfect a timely appeal if the postmark affixed by the United States Postal Service is beyond the filing date. *Pepsi-Cola Bottling Company of Cedar Rapids v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

The administrative law judge concludes that the employer did not file its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because it did not file an appeal of that Statement within thirty days of the mailing date.

DECISION:

The February 8, 2019, Statement of Charges is affirmed. The employer did not file a timely appeal from the Fourth quarter 2018 Statement of Charges. The charges shall remain in full force and effect. Benefits are allowed.

Duane L. Golden
Administrative Law Judge

Decision Dated and Mailed

dlg/scn