

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JANICE L DAVISON
Claimant

ENVIRONET INC
Employer

APPEAL 17A-UI-12213-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 06/04/17
Claimant: Respondent (1R)

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

STATEMENT OF THE CASE:

EnviroNET, Inc. (employer) filed an appeal from the Statement of Charges dated November 9, 2017, for the third quarter of 2017. A hearing was held on December 27, 2017, pursuant to due notice. Janice L. Davison (claimant) participated. The employer participated through Owner Molly Newell. The Claimant's Exhibit A, Employer's Exhibit 1, and Department's Exhibit D1 were received without objection.

ISSUE:

Was 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 claimant filed her claim for benefits the week of June 4, 2017. The employer protested and an unemployment insurance decision was issued which denied the claimant benefits. The claimant appealed and the administrative law judge reversed the decision allowing her to receive benefits. The employer appealed that decision to the Employment Appeal Board (EAB) who affirmed the administrative law judge's decision.

On or about September 1, 2017, the employer contacted Iowa Workforce Development (IWD) to notify it that the claimant was working and it did not believe the claimant was able to work, available for work, and actively or earnestly seeking work. The employer filled out the form as advised and mailed it back, but did not receive any response from IWD.

The employer received a Statement of Charges dated November 9, 2017 for the third quarter of 2017. The employer filed its appeal of that Statement of Charges on November 14, 2017. The issue of whether the claimant is able to work, available for work, or actively and earnestly seeking work based on her work as a licensed realtor has 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 filed a timely appeal to its 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.

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 employer filed its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because it was the first notice it received that the claimant was receiving benefits after raising the issue of whether she is able to work, available for work, or actively and earnestly seeking work. The employer's appeal of that Statement within thirty days is timely. The issue of whether the claimant is able to work, available for work, or actively and earnestly seeking work based on her work as a licensed realtor is remanded to the Benefits Bureau for an initial investigation and determination.

DECISION:

The November 9, 2017, Statement of Charges for the third quarter of 2017 is affirmed pending the outcome of the remanded issue. The employer has filed a timely appeal from the Statement of Charges, as it was the first notice it had the claimant was receiving benefits after raising the issue of whether she was able to and available for work with IWD.

REMAND:

The issue of whether the claimant is able to work, available for work, or actively and earnestly seeking work based on her work as a licensed realtor is remanded to the Benefits Bureau for an initial investigation and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn