

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

OSCAR E YAC
Claimant

APPEAL 18A-UI-09398-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PANDA EXPRESS INC
Employer

**OC: 02/11/18
Claimant: Respondent (1R)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the second quarter 2018 statement of charges mailed to them on August 9, 2018 notifying them that benefits were paid to Oscar E. Yac and their account was subject to charges for those benefits. The parties were properly notified about the hearing. A telephone hearing was held on September 27, 2018. Claimant did not participate. Employer participated through Stephanie Orea, Unemployment Insurance Manager for Employer Tax Service Corporation. Official notice was taken of agency records

ISSUES:

Did the employer file a timely protest?
Did the employer file a timely appeal to their second quarter 2018 statement of charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A notice of a fact-finding interview was mailed to the employer at an incorrect mailing address. The suite number was listed as “2” when in fact it was “270”. Despite the fact that it was sent to an incorrect address the employer received the notification that told them a fact-finder would be calling them on February 23, 2018 at 11:20 a.m. Iowa time to conduct a fact-finding interview about the claimant’s separation from Panda Express. The employer chose not to participate in the fact-finding interview, but thought they had until March 1, 2018 to submit written documents. The employer misread the notification form sent to them as having a due date for written documents of March 1, 2018. The fact-finder issued a decision allowing benefits and charging the employer’s account on February 26, 2018. The fact-finding decision was also sent to an incorrect mailing address that listed the suite number as “2” and not “270”. Unfortunately the employer did not receive the fact-finder’s decision.

The statement of charges for the first quarter of 2018 does not list this claimant as a recipient of unemployment benefits that were chargeable to the employer. The first notice the employer had that the fact-finding decision had been issued and their account was being charged was when they received the second quarter 2018 statement of charges. That statement was mailed to the correct mailing address.

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.

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 fact-finder's decision that allowed benefits. The employer's appeal of the statement of charges within thirty days is timely.

No hearing has been held on the fact-finder's decision issued on February 26, 2018 that allowed benefits.

REMAND:

The fact-finding decision issued on February 26, 2018 will be set up for an appeal hearing by the Appeals Bureau.

DECISION:

The August 9, 2018 statement of charges for the second quarter of 2018 is affirmed, pending the outcome of the hearing and decision the fact-finder's decision issued on February 26, 2018, (reference 01).

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs