

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

RHIANNON STAKER
Claimant

APPEAL 21A-UI-01087-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

JETHRO'S LAKEHOUSE INC
Employer

OC: 03/15/20
Claimant: Respondent (1)

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:

On November 20, 2020, the employer filed an appeal from the November 9, 2020, Statement of Charges for the third quarter of 2020. A hearing was scheduled and held on February 17, 2021, pursuant to due notice. The claimant participated. Her father, Aaron Staker, observed. The employer participated through operations administrator Rachel Ramsey. Official notice was taken of the administrative record.

ISSUES:

Is the employer's protest timely?

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: Claimant filed a combined wage claim in Minnesota effective March 15, 2020. Iowa Workforce Development transferred wages to the State of Minnesota. On March 18, 2020, Iowa Workforce Development mailed a Notice of Wage Transfer to employer. Employer never received a Notice of Wage Transfer.

On August 7, 2020, Iowa Workforce Development mailed a statement of charges for the second quarter of 2020 to employer's last address of record. The statement of charges warned that an appeal was due within 30 days of the statement being mailed. There is no reason to believe the statement was not received within several days of it being mailed. The statement included charges for claimant's unemployment insurance benefits. Employer did not file an appeal.

On November 9, 2020, Iowa Workforce Development mailed a statement of charges for the third quarter of 2020 to employer's last address of record. The statement included charges for claimant's unemployment insurance benefits. Employer filed an appeal on November 20, 2020.

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 failed to timely protest/appeal the benefits to the claimant because it did not timely appeal the first Statement of Charges that was mailed to it on August 7, 2020.

The record shows that the appellant did have a reasonable opportunity to file a timely appeal. The administrative law judge concludes that failure to follow the clear written instructions to file a timely appeal within the time prescribed by the Iowa Employment Security Law *was not due to any Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was not timely, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979).

DECISION:

The November 9, 2020, Statement of Charges for the third quarter of 2020 is affirmed. The employer did not file a timely appeal from the second quarter August 7, 2020, Statement of Charges, and therefore the appeal to third quarter November 9, 2020, Statement of Charges is also untimely. The charges shall remain in full force and effect. Benefits are allowed.



Christine A. Louis
Administrative Law Judge
Unemployment Insurance Appeals Bureau
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax (515)478-3528

February 26, 2021
Decision Dated and Mailed

cal/scn