

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**KENNETH P FITZGERALD**  
Claimant

**REES ASSOCIATES INC**  
Employer

**APPEAL 18A-UI-02227-SC-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 08/06/17**  
**Claimant: Respondent (1)**

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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:**

Rees Associates, Inc. (employer) filed an appeal from the Statement of Charges dated February 9, 2018 for the fourth quarter of 2017 which showed charges to its account for Kenneth P. Fitzgerald (claimant). The parties were properly notified about the hearing. A telephone hearing was held on March 14, 2018. The claimant did not respond to the hearing notice and did not participate. The employer participated through Director of Human Resources Roy Hansen. Maintenance Supervisor Troy Williams was sworn in as a witness but did not testify. The Employer's Exhibit 1 and Department's Exhibits D1 and D2 were admitted without objection.

**ISSUES:**

Is the employer's protest timely?  
Is the employer's appeal from the Statement of Charges timely?  
Is the Statement of Charges correct?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits the week of August 6, 2017. A notice of claim was mailed to the employer's address of record on October 2, 2017 and the employer protested the claim for benefits on October 4, 2017. A fact-finding interview was held on October 13, 2017. President Stephen Lundstrum participated on the employer's behalf. The unemployment insurance decision allowing the claimant to receive benefits was mailed to the employer's last known address of record on October 16, 2017. The employer received the decision within ten days on October 18, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Bureau by October 26, 2017.

At the time the decision was issued, the employer was in a state of transition. Director of Human Resources Roy Hansen was new to the job and had hired an employee to help him organize the office. The employee saw the unemployment insurance decision, but filed it in the claimant's personnel file rather than give it to Hansen or Lundstrom.

On February 9, 2018, a Statement of Charges for the fourth quarter of 2017 was mailed to the employer with charges to the employer's account based on the claimant's claim for benefits. Hansen did not recognize the claimant's name and pulled his personnel file. He then discovered the unemployment insurance decision dated October 16, 2017, reference 01. On February 15, 2018, the employer appealed the Statement of Charges.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the employer's appeal to the Statement of Charges is untimely and the Statement of Charges is correct.

Iowa Code section 96.6(2) provides:

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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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. (Emphasis added.)*

Employers are allowed thirty days to appeal a Statement of Charges if it is the first notice it has that the claimant is eligible to receive benefits. The employer had received notice and protested the claimant's claim for benefits in October 2017. The employer also received the unemployment insurance decision dated October 16, 2017, reference 01, that allowed the claimant benefits. As it did not appeal that decision within ten days, it has become final agency action. The employer's appeal to the Statement of Charges is not timely as it had prior notice of the claim for benefits and, as the claimant has been allowed benefits, the Statement of Charges is correct.

**DECISION:**

The February 9, 2018, Statement of Charges for the fourth quarter of 2017 is affirmed. The employer's appeal is untimely as it had prior notice of the claim for benefits and, as the allowance of unemployment insurance benefits has become final agency action, the Statement of Charges is correct.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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