

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SUSAN A BROWN
Claimant

APPEAL 17A-UI-08397-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ONE IA DUBUQUE HIE MANAGEMENT LLC
Employer

**OC: 01/01/17
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the Statement of Charges dated August 9, 2017, for the second quarter of 2017. Due notice was issued and a hearing was held on September 5, 2017. The claimant did not participate. The employer participated through witness Lynette Montes. The Department's Exhibit D1 was admitted. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the employer file a timely appeal from a quarterly statement of benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant separated from employment in January of 2016. A notice of claim was mailed to the employer on January 9, 2017 with a due date of January 19, 2017. The employer received the notice of claim prior to the due date but the employee who completed the statement of protest was out of the office until January 23, 2017, when she completed the statement of protest. See Exhibit D1. The employer's statement of protest was postmarked on January 24, 2017, which was after the due date on the notice of claim.

Upon receipt of the untimely protest, a decision dated February 7, 2017 (reference 04) was issued that found the employer's protest was not accepted because it was not timely and that the employer's account may be charged for benefits paid. The employer received the decision dated February 7, 2017 (reference 04) before the appeal deadline. The decision stated that it became final unless an appeal was postmarked by February 17, 2017. The employer filed an appeal to the decision on August 16, 2017, well after the February 17, 2017 appeal deadline.

A statement of charges for the first quarter of 2017 was mailed to the employer on May 9, 2017, which the employer received. The claimant's name and amount of benefits charged to the employer's account was listed on the first quarter 2017 statement of charges. No timely appeal to the first quarter of 2017 statement of charges was filed by the employer.

The second quarter of 2017 statement of charges was mailed to the employer on August 9, 2017, which the employer received. The employer filed an appeal to the second quarter of 2017 statement of charges on August 16, 2017 via facsimile.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met.

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

(emphasis added).

In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d. 373 (Iowa 1979). Because the employer's appeal to the February 7, 2017 decision was untimely, there is no jurisdiction to make a decision regarding the claimant's eligibility for benefits. *Id.*; *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

Iowa Code § 96.7(2)a(6), states as follows:

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.

An employer is only allowed to appeal to the department for a hearing to determine the eligibility of the individual to receive benefits if they were not previously notified pursuant to Iowa Code § 96.6(2) of the notice of claim. In this case, the employer did receive the notice of claim and responded. A decision dated February 7, 2017 (reference 04) determining the protest was not timely and finding that the employer's account may be subject to charges was made and never appealed in a timely manner by the employer. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met.

DECISION:

The employer has not met the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6). The charges for the second quarter of 2017 shall remain in full force and effect.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs