

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MATTHEW L WHITTERS
Claimant

BROWN'S CONCRETE & BACKHOE INC
Employer

APPEAL 20A-UI-04071-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/20
Claimant: Respondent (2/R)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the statement of charges for the first quarter of 2020, reference 02. After due notice was issued, a hearing was held by telephone conference call on June 2, 2020. The claimant did not provide a telephone number and, therefore, did not participate in the hearing. The employer participated through Robert Brown, Owner, and Michele Brown, Office Manager. Department's Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the employer's protest is timely and whether its protest of the statement of charges is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant's notice of claim was mailed to the employer's address of record on February 5, 2020. The employer did not receive the notice of claim. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date, February 18, 2020. The employer's postal box number is similar to the business name of the box above it. The employer has complained to the United States Postal Service about problems with mail service and incorrect delivery of mail for years.

On May 8, 2020, the employer was mailed a statement of charges for the first quarter of 2020. This was the first notice the employer had of the claimant's filing for unemployment insurance benefits. The document contained information that stated, "If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 30 days after the date of the mailing of this statement." The employer appealed for the notice of claim and statement of charges on May 11, 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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979).

The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer has shown good cause for not complying with the jurisdictional time limit. It did not receive the notice of claim.

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the employer did not receive the notice of claim within ten days of the mailing date. After discovering about the claim when it received the statement of charges, the employer immediately filed an appeal.

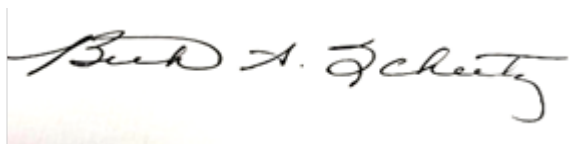
With regard to the timeliness of the employer's appeal of the statement of charges with the thirty-day time period prescribed by the Iowa Employment Security Law, the employer did receive the statement of charges indicating the claimant had filed a claim for benefits. It did file an appeal within the thirty day period. An employer is allowed to appeal the statement of charges 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 allowance of benefits or meet the requirements under Iowa Admin. Code r. 871-24.35(2) in filing a timely protest. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have been met. The protest and the appeal shall be considered timely.

The issue of the claimant's separation is remanded to claims, if necessary, for a determination.

DECISION:

The reference 02, statement of charges for the first quarter of 2020, is reversed. The protest and the appeal shall be considered timely.

The issue of the claimant's separation is remanded to claims, if necessary, for a determination.



Beth A. Scheetz
Administrative Law Judge

June 17, 2020
Decision Dated and Mailed

bas/scn