

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**ROBERT B MC GREGOR**  
Claimant

**M & M CARTAGE INC**  
Employer

**APPEAL 18A-UI-11195-DB-T**  
**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/10/18**  
**Claimant: Respondent (2R)**

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Iowa Code § 96.6(2) – Timely 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 dated November 9, 2018, which listed charge information for the third quarter of 2018. Due notice was issued and a hearing was held on December 5, 2018. Claimant participated personally. Employer participated through witness Ernie Williams. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did the employer file a timely protest?  
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 his initial claim for unemployment insurance benefits effective June 10, 2018. He separated from employment with this employer in June of 2018. An unemployment insurance benefits decision was issued on July 2, 2018 (reference 01) that found the claimant was not eligible for unemployment insurance benefits due to his discharge from work.

Claimant filed an appeal of the July 2, 2018 (reference 01) decision and a hearing was held with administrative law judge ("ALJ") Bennett. See Appeal No. 18A-UI-07255-B2T. ALJ Bennett reversed the initial unemployment insurance decision and found that the claimant's separation from employment was not disqualifying. See Appeal No. 18A-UI-07255-B2T. Mr. Williams credibly testified that the employer did not receive a copy of the Appeal Bureau decision in Appeal No. 18A-UI-07255-B2T. No appeal has been filed from the Appeal No. 18A-UI-07255-B2T decision. ALJ Bennett remanded the issue of whether the claimant was able to and available for work to the Benefits Bureau for an initial fact-finding interview and decision.

A fact-finding interview was scheduled for August 6, 2018 (reference 02) regarding whether the claimant was able to and available for work. Claimant's administrative records establish that

notice of the fact-finding interview was not given to the employer to participate in the interview. The employer did not participate in the fact-finding interview, because it did not know it was taking place, and an unemployment insurance decision was issued on August 9, 2018 which found that the claimant was eligible for unemployment insurance benefits.

The employer received the statement of charges for the third quarter of 2018 that was mailed to it showing charges to its account for benefits paid to the claimant. This was the first notification that the employer received informing it that the claimant had been found eligible for unemployment insurance benefits since it never received ALJ Bennett's decision in Appeal No. 18A-UI-07255-B2T or the August 9, 2018 (reference 02) unemployment insurance benefits decision. The employer filed an appeal to the statement of charges dated November 9, 2018 on November 15, 2018.

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

For the reasons that follow, the administrative law judge concludes the employer did file a timely appeal to the statement of charges and the conditions for appealing the statement of charges have been met.

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.

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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979).

In this case, the employer presented credible evidence that it did not receive ALJ Bennett's decision in Appeal No. 18A-UI-07255-B2T or the August 9, 2018 (reference 02) unemployment insurance benefits allowance decision. As such, the statement of charges was the first notification the employer received regarding the allowance 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.

(emphasis added).

An employer is only allowed to appeal the statement of charges if they were not previously notified pursuant to Iowa Code § 96.6(2) of the allowance of benefits. In this case, the employer was not previously notified of the allowance of benefits to the claimant. Further, the employer has filed an appeal to the statement of charges within thirty days of the date of mailing of the statement of charges.

**DECISION:**

The conditions for appealing the statement of charges dated November 9, 2018 for the third quarter of 2018 have been met. The November 9, 2018 statement of charges for the third quarter of 2018 are reversed.

**REMAND:**

The matter is remanded to the Iowa Workforce Development Tax Bureau to issue a statement of charges consistent with this decision and the decision in Appeal No. 11199-DB-T.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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