

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JACOB A CHOLLETT**  
Claimant

**APPEAL 17A-UI-06793-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**MT CRESCENT SKI AREA**  
Employer

**OC: 12/04/16  
Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

Mt. Crescent Ski Area (employer) filed an appeal from the Statement of Charges dated May 9, 2017, for the first quarter of 2017. A hearing was held on July 21, 2017, pursuant to due notice. The claimant did not respond to the hearing notice and did not participate. The employer participated through Vice President Samantha Fleischer. Department Exhibits D1 and D2 were received.

**ISSUE:**

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: The notice of claim was mailed to the employer's address of record on December 9, 2016. The employer did not receive that notice. The first notice of the claimant's claim for benefits was the receipt of the Statement of Charges mailed May 9, 2017, for the first quarter of 2017. The employer submitted its appeal of that Statement of Charges via email on June 24, 2017, which is beyond the thirty-day appeal deadline. The employer delayed in submitting its appeal as it did not receive the Statement of Charges until on or just before June 24, 2017. The employer's main work season is during the winter. It does some work during the summer, but the owners travel regularly during the off season. When they are out of town, no one checks their post office box until they return. Even during the season, the employer only checks its post office box once a week.

**REASONING AND CONCLUSIONS OF LAW:**

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

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 Iowa Code section 96.6(2) 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 employer's choice not to check its mail while it was out of town during the off season was a business decision. The delay 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). No other good cause reason has been established for the delay. As the employer has not submitted a timely appeal to the Statement of Charges, the administrative law judge does not have jurisdiction over the separation issue.

**DECISION:**

The May 9, 2017, Statement of Charges is affirmed. The employer did not file a timely appeal from the first quarter 2017 Statement of Charges. The charges shall remain in full force and effect. Benefits are allowed.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed  
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