

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHASE R HUBKA
Claimant

DAVID RYAN CONSTRUCTION LLC
Employer

APPEAL 20A-UI-04066-AW-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/01/19
Claimant: Respondent (1R)**

Iowa Code § 96.6(2) – Filing – Timely protest
Iowa Code § 96.7(2)A(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

Employer filed an appeal from the Statement of Charges dated May 8, 2020 for the first quarter of 2020. The parties were properly notified of the hearing. A telephone hearing was held on June 1, 2020, at 11:30 a.m. Claimant participated. Employer participated through Tracy Ryan, Owner. No exhibits were admitted. Official notice was taken of the administrative record.

ISSUES:

Whether employer's protest is timely.
Whether employer's appeal from the statement of charges is timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed his claim for unemployment insurance benefits effective December 1, 2019. The notice of claim was mailed to the employer's address of record on December 5, 2019. Employer did not protest the claim. Employer received the Statement of Charges mailed May 8, 2020 for the first quarter of 2020, which included a charge for claimant. Employer appealed the Statement of Charges on May 12, 2020. Employer's appeal was received by Iowa Workforce Development the same day. Employer is protesting claimant's receipt of benefits for the week ending May 2, 2020 on the basis that claimant was not able to and available for work that week. Claimant worked April 27 and 30, 2020 and May 1, 2020 for a total of 25 hours at \$15.00 per hour. Claimant was absent April 28 and 29, 2020 due to illness. The administrative record reflects that claimant filed a weekly claim for the week ending May 2, 2020, reported that he was able to and available for work and did not report any wages earned. There has been no initial investigation or decision regarding whether claimant was able to and available for work, whether claimant properly reported his wages and whether claimant is overpaid benefits for the week ending May 2, 2020. These issues should be remanded to the Benefits Bureau for an initial investigation and decision.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's protest of the Notice of Claim is untimely. Therefore, employer has not met the conditions for appealing the Statement of Charges.

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. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the Iowa Supreme 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.

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.

Iowa Admin. Code r. 871-26.4 provides, in relevant part:

2. An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp after the decision was mailed to the party at its last-known address and shall state the following:
 - a. The name, address and social security number of the claimant;
 - b. A reference to the decision from which appeal is taken; and,
 - c. The grounds upon which the appeal is based.

3. Notwithstanding the provisions of subrule 26.4(2), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 30 days from the mailing date of the quarterly statement of benefit charges.

4. Also notwithstanding the provisions of subrule 26.4(2), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 15 days of the mailing date of the quarterly billing of benefit charges.

In this case, employer received the Notice of Claim but did not submit a Statement of Protest. Therefore, employer has not met the statutory requirements to appeal the Statement of Charges. Furthermore, the week of benefits employer intends to protest (April 26, 2020 – May 2, 2020) is in the second quarter of 2020 and, thus, is not included in the Statement of Charges mailed May 8, 2020. The Statement of Charges mailed May 8, 2020 for the first quarter 2020 is affirmed.

The issues of whether claimant was able to and available for work, whether claimant properly reported his wages and whether claimant was overpaid benefits for the week ending May 2, 2020 are remanded to the Benefits Bureau for an initial investigation and decision.

DECISION:

The Statement of Charges mailed May 8, 2020 for the first quarter of 2020 is affirmed. Employer did not file a timely protest of the Notice of Claim and, thus, does not meet the requirements for appealing the Statement of Charges.

REMAND:

The issues of whether claimant was able to and available for work, whether claimant properly reported his wages and whether claimant was overpaid benefits for the week ending May 2, 2020 are remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.



Adrienne C. Williamson
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June 17, 2020
Decision Dated and Mailed

acw/sam