

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SARAH LANDSNESS
Claimant

FAMILY WELLNESS ASSOCIATES INC
Employer

APPEAL 19A-UI-01473-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/21/18
Claimant: Respondent (1)**

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:

Family Wellness Associates, Inc. (employer) filed an appeal from the statement of charges dated July 16, 2018, for the first quarter of 2018. After due notice was issued, a hearing was held by telephone conference call beginning on March 6, 2019 and concluded on April 10, 2019. It was consolidated with the hearings for appeals 19A-UI-01474-SC-T and 19A-UI-01475-SC-T. Sarah Landsness (claimant) participated personally. The employer participated through Clinic Manager Kerry Kuehl. The Department's Exhibits D1 through D4 were received. The administrative law judge took official notice of the administrative record.

ISSUES:

Was the employer's protest timely?
Was the employer's appeal from the statement of charges timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant was separated from employment beginning November 27, 2017 through July 8, 2018. She filed a claim for benefits effective January 21, 2018.

The notice of claim was mailed to employer's address of record on January 24, 2018, and was received by employer within ten days. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of February 5, 2018. The employer contends it mailed the protest prior to the due date; however, agency records show the employer's protest was not received.

On July 16, 2018, the statement of charges for the first quarter of 2018 was mailed to the employer's address of record. On August 9, 2018, the statement of charges for the second quarter of 2018 was mailed to the employer's address of record. Both showing charges to the employer's account based on the claimant's claim for unemployment insurance benefits. The employer contends it did not receive either document.

In December 2018, the employer received notice of a tax rate increase due to the claimant's receipt of benefits. On February 8, 2019, the employer contacted Iowa Workforce Development (IWD) to protest the claimant's claim for benefits and the charges to its account for the first and second quarter of 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not file a timely appeal to the statement of charges.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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:

Employer contribution and reimbursements.

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's protest to the claimant's receipt of benefits through an appeal to the statement of charges is not permitted as the employer received the notice of claim mailed pursuant to Iowa Code section 96.6(2) and had knowledge that its account could be subject to charge for the claimant's benefits. An appeal to the statement of charges is only appropriate when the employer did not have prior notice that a claim had been filed. Iowa Code section 96.7(2)a(6).

Even if it is accepted that the employer did not receive the statement of charges and had no knowledge its account was subject to charge, the employer did receive notice that its account was being charged for the claimant's benefits in December 2018. The employer did not file an appeal requesting a hearing to determine the claimant's eligibility until February 8, 2019. The employer did not file its appeal within 30 days of the first notification it had that the claimant was receiving benefits chargeable to its account.

DECISION:

The July 16, 2018, statement of charges for the first quarter of 2018 is affirmed. The employer did not timely appeal the statement of charges.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn