

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANIEL R FILL
Claimant

FALBOS FOREVER LLC
Employer

APPEAL 18A-UI-08879-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/01/18
Claimant: Respondent (1R)**

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 August 9, 2018, which listed charge information for the second quarter of 2018. Due notice was issued and a hearing was held on September 10, 2018. Claimant did participate. Employer participated through witness Jenna Gathercole. 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:

A notice of claim was mailed to BMG Pizza LLC on April 9, 2018 regarding claimant's claim for unemployment insurance benefits which was effective April 1, 2018; however, the administrative records establish that the mail was returned not deliverable as addressed, unable to forward. A note on the Notice of Claim in the claimant's administrative records state that the Notice of Claim was forwarded to Falbos Foreever LLC (employer account number 604846); however no date was listed on when it was forwarded. The first notice that the employer remembers receiving that it would be charged for benefits paid was the statement of charges that was mailed to the employer on August 9, 2018. The employer filed an appeal to the statement of charges on August 22, 2018.

There has been no initial investigation and determination regarding claimant's separation from BMG Pizza LLC. The question of whether the claimant's separation from employment with BMG Pizza LLC was disqualifying will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

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.

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). 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.

An exception exists to filing a response within ten days if there is credible evidence that the delay was due to agency error, misinformation or delay, or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). If the employer has failed to file a timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make any determination with respect to the nature of the claimant's separation from employment. See *Beardslee*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

In this case, the employer presented credible evidence that BMG Pizza LLC did not receive the notice of claim mailed to it on April 9, 2018 because the notice was returned to Iowa Workforce Development at not deliverable as addressed. As such, the statement of charges was the first notification this 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 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. In this case, BMG Pizza LLC was not previously notified of the claim because it did not receive it. 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 have been met. The August 9, 2018 statement of charges for the second quarter of 2018 is affirmed pending the investigation regarding the remanded issue.

REMAND:

The issue of whether the claimant's separation from employment with BMG Pizza LLC was disqualifying is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs