ISRAEL CORTEZ
Claimant

APPEAL 20A-UI-04807-S1-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

RJ TIDE CONSTRUCTION COMPANY INC
Employer

OC: 02/24/19
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:

The employer filed an appeal from the statement of charges for the first quarter of 2020, reference 01. After due notice was issued, a hearing was held by telephone conference call on June 23, 2020. The claimant participated personally through Dereek, Interpreter, 12859 and Daniela, Interpreter, 12397. The employer participated through Matthew Billings, Director of Human Resources. Department's Exhibit D-1 was received into evidence. The administrative law judge took official notice of the administrative file.

ISSUE:

The issue is whether the employer's protest is timely and whether its protest of the statement of charges is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds that: The claimant established a claim for unemployment insurance benefits effective February 24, 2019. The employer has opted to participate in the multistate SIDES program. A notification of claim was transmitted to the employer's certified public accountant at at the email address the employer provided. The notice contained a warning that a protest must be received by the Agency by March 11, 2020. Neither the certified public accountant nor the employer transmitted a protest.

On May 8, 2020, the employer was mailed a statement of charges for the first quarter of 2020. The document contained information that stated, "If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 30 days after the date of the mailing of this statement." The employer appealed for the notice of claim and statement of charges on May 25, 2020.

REASONING AND CONCLUSIONS OF LAW:

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

> 1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.
> 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 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).
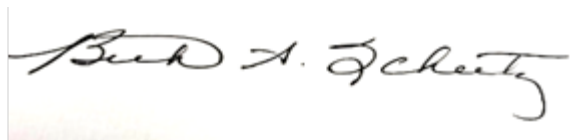
The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed. The employer argues that the section of the code regarding mailing of the "initial determination" should be controlling as to the notice of claim. In this case, the employer requested notification by email. It signed up for the program and provided an email address. The specifically states that the department may persribe rules with regard to filing. The employer has not shown any good cause for not complying with the jurisdictional time limit for responding to the notice. Therefore, the administrative law judge finds the protest untimely.

With regard to the timeliness of the employer's appeal of the statement of charges with the thirty-day time period prescribed by the Iowa Employment Security Law, the employer did receive the statement of charges indicating the claimant had filed a claim for benefits. It did file an appeal within the thirty day period. However, 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 or meet the requirements under Iowa Admin. Code r. 871-24.35(2) in filing a timely protest. As

such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met. The first quarter of 2020, statement of charges is affirmed regarding the claimant.

DECISION:

The reference 01, statement of charges for the first quarter of 2020, is affirmed. The employer did not file a timely protest. Benefits are allowed, provided the claimant is otherwise eligible.

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Beth A. Scheetz
Administrative Law Judge

July 1, 2020_____
Decision Dated and Mailed

bas/scn