

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS E PIERCE
Claimant

LUMBER SPECIALTIES US LBM LLC
Employer

APPEAL 20A-UI-04121-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/10/19
Claimant: Respondent (4)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(2)a(6) – Appeal from the Statement of Charges
Iowa Code Chapter 96 – Requalification

STATEMENT OF THE CASE:

On May 12, 2020, the employer filed an appeal from Statement of Charges dated May 8, 2020, for the first quarter of 2020. After proper notice, a telephone hearing was conducted on June 2, 2020. Claimant did not participate. Employer participated through Rachel Bacon, human resources generalist. Employer Exhibit A was admitted into evidence. Department Exhibit D-1 (Employer Appeal) was admitted into evidence. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Is the employer's protest timely?
Is the employer's appeal from the statement of charges timely?
Has claimant requalified for benefits?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a claim for benefits with an effective date of November 10, 2019.

On November 15, 2019, a notice of claim was mailed to the employer's address of record. The employer received the claim, within the prescribed period to protest. The notice of claim stated, "[a]s an employer of this claimant within the past 18 months from the effective date of claim, your account may receive charges based upon wages you have paid this claimant unless you provide Iowa Workforce Development with information justifying relief from such charges. Any benefits paid may result in a rate increase to your account."

Ms. Bacon received the notice of claim and completed it. The date listed under the "certified complete" section of the protest listed a date of November 18, 2019. Ms. Bacon stated she faxed it to IWD on the same day. She did not have proof of fax confirmation available. No

protest was received by IWD on November 18, 2019 or by November 25, 2019, the final day to protest.

The administrative records reflect that on February 7, 2020, IWD sent the employer a fourth quarter of 2019 statement of benefit charges notifying the employer that the claimant benefits charged to the employer's account. It is unclear whether the employer received the statement of charges, inasmuch as Ms. Bacon stated the first time she learned of the potential charges was in May.

On May 8, 2020, IWD sent the employer a first quarter statement of benefit charges notifying the employer that the claimant benefits charged to the employer's account. The employer filed its appeal on May 12, 2020 (Department Exhibit D-1).

The claimant has requalified for benefits since the separation from the employer.

REASONING AND CONCLUSIONS OF LAW:

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.

Iowa Code section 96.7(2)a(6), states that an employer who did not receive notice of the claim may appeal to the department for a hearing to determine the eligibility of an individual to receive benefits. 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.

The employer did timely receive the notice of claim (Bacon testimony). The employer stated it filed a timely protest by fax on November 18, 2019. IWD did not receive a notice of protest from the employer. While the best evidence presented of the submission would have been through the proof of successful fax transmittal or fax confirmation, the undisputed, credible evidence is the employer made a good faith effort to timely protest the initial claim and did not learn it was

unsuccessful until the May 8, 2020 statement of charges was mailed. It appealed four days later.

The administrative law judge concludes that the employer timely protested the claim and the employer's appeal of the Statement of Charges within thirty days is timely. The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The May 8, 2020, Statement of Charges for the first quarter of 2020 is modified in favor of the appellant. The employer has filed a timely protest and a timely appeal from that Statement of Charges. The claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.



Jennifer L. Beckman
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June 22, 2020
Decision Dated and Mailed

jlb/scn