

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDON L STRIPLING

Claimant

APPEAL 18A-UI-11536-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

PORTER MOVING COMPANY LLC

Employer

OC: 04/08/18

Claimant: Respondent (4)

Iowa Code § 96.6(2) – Timeliness of Protest/Appeal

Iowa Code § 96.7(2)a(6) – Appeal from the Quarterly Statement of Charges

STATEMENT OF THE CASE:

The employer filed an appeal from the Statement of Charges dated November 9, 2018, for the third quarter of 2018 ending September 30, 2018. Due notice was issued and a hearing was held on December 12, 2018. The claimant did participate personally. The employer participated through witness John Davis. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

ISSUES:

Did the employer file a timely protest of the claim?

Did the employer file a timely appeal from a quarterly statement of benefit charges?

Was the statement of charges correct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant separated from employment in January of 2018. He filed his initial claim for unemployment insurance benefits effective April 8, 2018.

An unemployment insurance decision was issued on August 23, 2018 (reference 04) which found that the employer filed an untimely protest. The employer filed an appeal to the decision and an appeal hearing was held on September 18, 2018 with administrative law judge ("ALJ") James E. Timberland ("Timberland").

On September 28, 2018, ALJ Timberland issued a decision which found that the employer's protest shall be considered timely and remanded the issue of whether claimant's separation from this employer was disqualifying back to the Benefits Bureau of Iowa Workforce Development ("IWD") for an initial investigation and determination. See Appeal No. 18A-UI-09056-JTT. Neither party filed an appeal from ALJ Timberland's decision.

Thereafter, IWD issued a decision dated October 16, 2018 (reference 05) which found that the claimant was not eligible for benefits and that the employer's account would not be charged for benefits due to the disqualifying nature of the claimant's separation from employment. However, another decision was issued on October 26, 2018 (reference 07) which then found that the claimant was eligible for benefits due to earning ten times his weekly benefit amount since the disqualifying separation from employment and that the employer's account would not be charged for benefits paid.

On November 9, 2018, a statement of charges was mailed to the employer listing charges for the third quarter of 2018 to the employer's account for benefits paid to the claimant. The amount of benefits charged to the employer's account on this statement of charges was \$308.00. This was the first notification the employer received after the October 26, 2018 (reference 07) decision that its account would be charged for any benefits paid to the claimant. The employer filed a timely appeal to the third quarter of 2018 statement of charges on November 28, 2018.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes that the employer has filed a timely appeal from the third quarter of 2018 statement of charges dated November 9, 2018.

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 § 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.

The administrative law judge concludes that the employer filed its appeal of the third quarter of 2018 statement of charges within the time period prescribed by Iowa Code § 96.7(2)a(6) because the statement of charges was the first time that the employer was notified that it would be charged for benefits paid to the claimant after the decision dated October 26, 2018 (reference 07) that found it would not be charged for any benefits paid. The employer's appeal of the third quarter of 2018 statement of charges within thirty days from the date of its mailing is timely. The statement of charges is inconsistent with the agency's previous decision. 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 statement of charges dated November 9, 2018 for the third quarter of 2018 is modified in favor of the appellant/employer. The employer has filed 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 for benefits paid.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs