

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES M ALLEN
Claimant

POLY VINYL ROOFING LLC
Employer

APPEAL 18A-UI-11698-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 12/31/17
Claimant: Respondent (4R)**

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:

Poly Vinyl Roofing, LLC (employer) filed an appeal from the statement of charges dated November 9, 2018, for the third quarter of 2018. A hearing was scheduled to be held on December 20, 2018, pursuant to due notice. James M. Allen (claimant) did not respond to the hearing notice. The employer responded to the hearing notice but no hearing was held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

ISSUES:

Was the employer's protest timely?
Was 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: The claimant filed his original claim for benefits effective December 31, 2017. The claimant separated from the employer on March 7, 2018. On August 27, 2018, an unemployment insurance decision, reference 02, was issued that allowed the claimant unemployment insurance benefits based on his separation. The employer appealed that decision. On September 25, 2018, following a hearing, the administrative law judge reversed the unemployment insurance decision and denied benefits. He also found the claimant was overpaid \$7,361.87 in unemployment insurance benefits. The claimant did not appeal that decision to the Employment Appeal Board and it has become final agency action.

The employer received the November 9, 2018 statement of charges for the third quarter of 2018, which showed it was still being charged for the claimant's benefits. The employer appealed the statement of charges on December 4, 2018.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer's appeal to the statement of charges is timely.

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.

The employer's appeal of the statement of charges was filed within the time period prescribed by the Iowa Employment Security Law because this was the first notice its account was being charged for benefits following the decision of the administrative law judge. The employer's appeal of that statement within thirty days is timely. Based on final agency action, the employer should not be charged for the claimant's receipt of benefits as he has been required to repay the benefits received in the third quarter of 2018.

DECISION:

The November 9, 2018, statement of charges for the third quarter of 2018 is modified in favor of the appellant that will be credited on a future statement of charges. The employer has filed a timely appeal from that statement of charges.

REMAND:

If the employer has not already been credited, this case is remanded to the Tax Bureau to apply the appropriate credit to the employer's account based on the decision of the administrative law judge in appeal 18A-UI-09292-DG-T dated September 25, 2018.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn