

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JUSTINE ANI
Claimant

JOHN M FREY COMPANY
Employer

APPEAL 19A-UI-01095-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 10/14/18
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer filed an appeal from the fourth quarter 2018 statement of charges mailed to them on February 8, 2019. The parties were properly notified about the hearing. A telephone hearing was held on February 26, 2019. Claimant participated. Employer participated through Stephanie Reimers, Human Resources Manager. Official notice was taken of agency records. Employer's Exhibit 1 was admitted into the record?

ISSUES:

Did the employer file a timely notice of protest?
Did the employer file a timely appeal to the statement of charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer participates in the SIDES whereby they are notified of any claims via e-mail. An e-mail notification of claimant's notice of claim was sent to the employer's correct e-mail address on October 18, 2018. The employer did receive the notice. Ms. Reimers filled out the form, printed it off and put it in the claimant's termination file. It appears as though Ms. Reimers inadvertently forgot to submit the notice of protest to the agency. The records of documents she has printed off which are part of employer's Exhibit 1 do not show any confirmation of the notice of protest actually being submitted to the agency. The agency SIDES system still shows as waiting for a response from the employer to the e-mailed notice of claim.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that the employer did not file a timely appeal to the notice of claim, thus, they have not met the requirements to be able to file an appeal to the fourth quarter 2018 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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states that an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d. 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been e-mailed to the employer. The employer failed to file a protest within the time period prescribed by Iowa Code § 96.6(2). The first indication the employer gave the agency that they were appealing the claimant's benefits was their appeal of the fourth quarter 2018 statement of charges on February 8, 2019. The employer's appeal to the notice of protest is untimely as it is over three months late. Because the protest was untimely, there is no jurisdiction to make a decision regarding the claimant's eligibility for benefits. *Id.*; *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action on the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest.

The result in this case is reinforced by Iowa Code § 96.7(2)a(6), which states as follows:

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.

In this case, the employer did not file a timely appeal to the notice of claim. As such, the conditions for appealing the statement of charges for fourth quarter of 2018 under Iowa Code § 96.7(2)a(6) have not been met.

DECISION:

The employer has failed to file a timely protest and has not met the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6). The charges for the fourth quarter of 2018 shall remain in full force and effect.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs