

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ANDREW J MERRITT**  
Claimant

**JOE WHITTERS LANDSCAPING**  
Employer

**APPEAL 20A-UI-04061-S1-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 01/06/19  
Claimant: Respondent (2)**

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 02. After due notice was issued, a hearing was held by telephone conference call on June 2, 2020. The claimant participated personally. The employer participated through Jerri Whitters, Owner/Vice President/Manager. Department's Exhibits D-1 and D-2 were 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's notice of claim was mailed to the employer's address of record on January 9, 2020, and received by the employer within ten days. The notice of claim contains a warning that any protest must be postmarked, faxed or returned not later than ten days from the initial mailing date. The employer signed the protest on January 13, 2020. The department received the protest on January 13, 2020.

A representative's decision was issued on January 15, 2020, reference 01, stating the claimant was eligible to receive unemployment insurance benefits after the disqualifying separation from the employer and the employer would not be charged.

On February 7, 2020, the employer was mailed a statement of charges for the fourth quarter of 2019. 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 February 12, 2020.

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 12, 2020.

## **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.

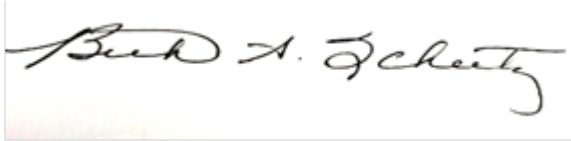
Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, 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 has shown that it complied with the jurisdictional time limit. Therefore, the administrative law judge finds the protest timely.

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.

**DECISION:**

The reference 02, statement of charges for the first quarter of 2020, is reversed. The employer did file a timely protest and statement of charges. The representative's decision dated January 15, 2020, reference 01, relieved the employer of charges.

A handwritten signature in black ink, reading "Beth A. Scheetz", is positioned above a horizontal line.

Beth A. Scheetz  
Administrative Law Judge

June 17, 2020  
Decision Dated and Mailed

bas/scn