

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ARQUIMIDES TORRES RODRIGUEZ
Claimant

STEVENS EROSION CONTROL INC
Employer

APPEAL 19A-UI-06949-S1-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 05/12/19
Claimant: Respondent (2R)

Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the statement of charges for the second quarter of 2019, reference 02. After due notice was issued, a hearing was held by telephone conference call on September 25, 2019. The claimant did not provide a telephone number and, therefore did not participate in the hearing. The employer participated through Nathan Sams, Accounting Controller. The employer offered and Exhibit 1 was 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 established a claim for unemployment insurance benefits effective May 12, 2019.

The claimant's notice of claim was mailed to the employer's address of record on May 17, 2019, 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 did file a protest on May 24, 2019, which is within the ten-day period. The department stamped the protest as received on May 24, 2019.

On August 9, 2019, the employer was mailed a statement of charges for the second 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 August 30, 2019. There are issues regarding the claimant's eligibility for employment insurance benefits that have not yet been investigated or adjudicated at the claims level.

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 concludes that employer has filed a timely protest and appeal of the statement of charges. The issue of the claimant's eligibility for unemployment insurance benefits is remanded for determination.

DECISION:

The reference 02, statement of charges for the second quarter of 2019, is reversed. The employer did file a timely protest and appeal to the statement of charges. The issue of the claimant's eligibility for unemployment insurance benefits is remanded for determination.

Beth A. Scheetz
Administrative Law Judge

Decision Dated and Mailed

bas/rvs