

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MEGAN M LANGE

Claimant

APPEAL 17A-UI-11069-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SPENCER FAMILY YMCA

Employer

OC: 07/30/17

Claimant: Respondent (1R)

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:

Spencer Family YMCA (employer) filed an appeal from the Statement of Charges dated October 15, 2017, for the third quarter of 2017. A hearing began on November 17, 2017 and concluded on November 29, 2017 pursuant to due notice. Megan M. Lange (claimant) participated. The employer participated through Childcare Director Julie Krogman and the hearing was observed by Amanda Mobley. Employer's Exhibit 1 was received without objection.

ISSUE:

Was the employer's protest to the claimant's claim for benefits timely?

Was the employer's appeal from the Statement of Charges timely and, if so, is the Statement of Charges correct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed her claim for benefits effective July 30, 2017. The notice of claim was mailed to the employer's address of record on August 3, 2017 and any protest was due by August 14, 2017. The employer received the notice and faxed its protest to the claim on August 8, 2017 to Iowa Workforce Development (IWD). The first notice of the claimant's receipt of benefits chargeable to the employer was the Statement of Charges mailed October 15, 2017 for the third quarter of 2017. The employer filed its appeal of that Statement of Charges on October 30, 2017. Whether the claimant is eligible for benefits based on her separation has not yet been investigated or adjudicated at the claims level.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge finds the employer filed a timely protest to the claim for benefits, a timely appeal to the Statement of Charges, and, based on the current information, the Statement of Charges is correct. However, whether the claimant is eligible for

benefits based on her separation has not yet been investigated or adjudicated at the claims level.

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.

The law provides that all interested parties shall be promptly notified about an individual filing a claim. The parties have ten days from the date of mailing the notice of claim to protest payment of benefits to the claimant. Iowa Code § 96.6(2). Another portion of section 96.6(2) dealing with timeliness of an appeal from a representative's decision states 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 has held that this statute clearly limits the time to do so, and compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The reasoning and holding of the Beardslee court is considered controlling on the portion of Iowa Code section 96.6(2) that deals with the time limit to file a protest after the notice of claim has been mailed to the employer.

The employer filed a protest in a timely manner on August 8, 2017, but the agency did not receive the fax transmission. The employer did not learn of the issue until after receiving the Statement of Charges when it learned that the claimant had been allowed to receive benefits. It then timely filed the appeal to the Statement of Charges by filing the appeal within thirty days. Therefore, the employer's protest shall be accepted as timely.

The agency has not yet investigated or adjudicated whether the claimant is eligible for benefits based on her separation. As a result, the Statement of Charges is currently correct. Based on the agency information at this time, the Statement of Charges is affirmed. However, as the employer filed a timely protest to the notice of claim, the issue of whether the claimant is eligible for benefits based on her separation is remanded to the Benefits Bureau for an initial investigation and determination.

DECISION:

The October 15, 2017, Statement of Charges for the third quarter of 2017 is affirmed pending the outcome of the remanded issue. The employer has filed a timely protest and appeal from the Statement of Charges, as it did not have notice that the claimant was allowed to receive benefits chargeable to its account.

REMAND:

The issue of whether the claimant is eligible for unemployment benefits based on her separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn