

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LANDON T JOYNT
Claimant

LOHMAN ENTERPRISES LLC
Employer

APPEAL 17A-UI-05962-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/01/17
Claimant: Respondent (1)**

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

STATEMENT OF THE CASE:

The employer filed an appeal from the Statement of Charges dated May 9, 2017, for the first quarter of 2017. A hearing was scheduled and held on June 26, 2017, pursuant to due notice. The claimant participated personally. The employer participated through witnesses Glen Lohman, Ann Lohman, and Bryan Lohman. Employer's Exhibit 1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

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 was employed for this employer beginning on June 2, 2010. Claimant separated from employment on June 17, 2016 when he resigned to accept new employment with another employer. On June 20, 2016 claimant began his employment with his new employer.

A notice of claim was mailed to the employer's address of record on January 5, 2017 and was received by Lowman Enterprises LLC. The employer completed the Statement of Protest on January 9, 2017 stating that the claimant left employment to take other employment. The Statement of Protest was mailed to Iowa Workforce Development on January 9, 2017.

On May 9, 2017, the Statement of Charges was mailed to the employer that listed charges for this claimant. The employer received the Statement of Charges and filed an appeal to the Statement of Charges in person at the Spencer, Iowa local Workforce Development office on June 9, 2017. See Exhibit 1. Glen Lohman and Ann Lohman mistakenly believed that the employer had until June 9, 2017 to file a timely appeal to the Statement of Charges. However, thirty days from May 9, 2017 is June 8, 2017.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.6(2) provides:

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. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

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 administrative law judge concludes that the employer did not file its appeal of the Statement of Charges within the time-period prescribed by the Iowa Employment Security Law. The thirty-day period from the date of mailing on May 9, 2017 is June 8, 2017. The employer did not file its appeal to the Statement of Charges until June 9, 2017, one day late. The employer's appeal of the Statement of Charges is not timely.

DECISION:

The employer has not filed a timely appeal from the Statement of Charges mailed May 9, 2017 for the quarter ending March 31, 2017. The charges shall remain in full force and effect.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs