

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**ERNAD BEGOVIC**  
Claimant

**TWELFTH MAN LLC**  
Employer

**APPEAL 19A-UI-01288-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 06/17/18  
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timely 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 dated February 8, 2019, which listed charge information for the fourth quarter of 2018. Due notice was issued and a hearing was held on March 4, 2019. Claimant did not participate. Employer participated through witness Rob Taylor. The administrative law judge took official notice of the claimant's unemployment insurance benefits records.

**ISSUES:**

Did the employer file a timely protest?  
Is 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:

A notice of claim was mailed to the employer's address of record (P.O. Box 93) on June 25, 2018 regarding claimant's initial claim for unemployment insurance benefits which was effective June 17, 2018. The notice of claim read "...your account may receive charges based upon wages you have paid this claimant unless you provide Iowa Workforce Development with information justifying relief from such charges."

The employer had discontinued using the post office box that it had Iowa Workforce Development ("IWD") deliver its mail to sometime in the spring of 2018. The employer did not have the postal service forward mail from the post office box to a different address of record. At some time the employer contacted IWD to inform it of a new address of record for the employer. Mr. Taylor did not remember when he contacted IWD to notify it of a new address of record.

On November 9, 2018, a statement of charges for the third quarter of 2018 was mailed to the post office box of record for the employer and it listed charge information regarding claimant's benefits paid and charged to the employer's account. No appeal was filed from the third quarter statement of charges. At sometime in November or December of 2018, Mr. Taylor updated the

employer's address of record using the IWD online system. The statement of charges for the fourth quarter of 2018 was mailed to the employer's new address of record on February 8, 2019. The employer filed an appeal to the statement of charges for the fourth quarter of 2018 on February 12, 2019.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the employer did not file a timely protest to the notice of claim and did not file a timely appeal to the third quarter of 2018 statement of charges, and as such, the conditions for appealing the statement of charges for the fourth quarter of 2018 have not been met.

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.

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. Iowa Dep't of Job Serv.*, 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 to file a protest after notification of the filing of the claim has been mailed.

An exception exists to filing a response within ten days if there is credible evidence that the delay was due to agency error, misinformation or delay, or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). If the employer has failed to file a timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make any determination with respect to the nature of the claimant's separation from employment. See *Beardslee*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

When an employer's protest of an initial claim for benefits is filed and an issue could result in a decision detrimental to an interested party, the rules require that the interested party shall be afforded the opportunity to present facts and evidence which may include an informational fact-finding interview scheduled by the department. Iowa Admin. Code r. 871-24.9(2). A decision is then issued by the department regarding the issue. *Id.* Regular proceeding by the agency would have meant the protest would be retained, a protest docketed, a fact-finding interview scheduled and held, and a decision issued. If a protest had been received prior to the due date, the regular process should have been triggered, but it was not. "The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular". Iowa Code § 622.56; *accord City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982).

The employer presented credible evidence that it failed to have mail forwarded by the postal service to a new address when it discontinued using the post office box address. Further, no

credible evidence was presented that the employer updated its address with IWD *prior* to the notice of claim being mailed to it on June 25, 2018. As such, it was the employer's error in failing to properly update the address of record with IWD and the postal service which led to it not receiving the notice of claim and statement of charges for the third quarter of 2018. This was not error due to United States Postal Service or IWD pursuant to Iowa Admin. Code r. 871-24.35(2).

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.*

(emphasis added).

An employer is only allowed to appeal the statement of charges for a hearing to determine the eligibility of the individual to receive benefits if they were not previously notified pursuant to Iowa Code § 96.6(2) of the allowance of benefits or meet the requirements under Iowa Admin. Code r. 871-24.35(2) in filing a timely protest. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met. The statement of charges dated February 8, 2019 is affirmed regarding this claimant.

**DECISION:**

The employer failed to file a timely protest. The conditions for appealing the statement of charges have not been met. The February 8, 2019 statement of charges for the fourth quarter of 2018 is affirmed regarding this claimant.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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