

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

CHRISTOPHER K WITHEM
Claimant

ANDRE TORRES
THINKER TOYS INC
Employer

APPEAL NO. 20A-UI-04105-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/15/20
Claimant: Respondent (1/R)

Iowa Code Section 96.6(2) – Timeliness of Protest
Iowa Code Section 96.7(2)(a)(6) – Appeal from Statement of Charges

STATEMENT OF THE CASE:

The employer filed a timely appeal from the quarterly Statement of Charges that was mailed to the employer on May 8, 2020. After due notice was issued, a hearing was held on June 2, 2020. Claimant Christopher Withem participated. Andrew Torres represented the employer. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant.

ISSUES:

Whether the employer's protest was timely.
Whether the employer's appeal from the Statement of Charges was timely.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer first learned of the claimant's March 15, 2020 original claim when the employer received the quarterly Statement of Charges that Iowa Workforce Development mailed to the employer on May 8, 2020. Iowa Workforce Development had not mailed or otherwise transmitted a Notice of Claim to the employer. On May 28, 2020, the Appeals Bureau received the employer's appeal from the statement of charges. The employer is protesting the claim based on the claimant's separation from the employment. Iowa Workforce Development has not yet adjudicated the claimant eligibility and the employer liability in connection with the separation. The claimant has not yet earned 10 times his weekly benefit amount since separating from this employment.

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.

The employer's protest and appeal from the State of Charges were timely. The employer did not receive a Notice of Claim and therefore had no opportunity to file a protest in response to a Notice of Claim. The employer filed its appeal from the Statement of Charges within the 30-day deadline. This matter will be remanded to the Benefits Bureau for adjudication of the claimant's eligibility for benefits and the employer's liability for benefits based on the employment separation.

DECISION:

The employer's protest and appeal from the Statement of Charges were timely. The Statement of Charges is not vacated, but will instead remain in place pending remand to the Benefits Bureau for adjudication of the claimant's eligibility for benefits and the employer's liability for benefits based on the employment separation.



James E. Timberland
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

jet/scn