

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**JOANELLE ROBY**  
Claimant

**ETHOS HOSPITALITY LLC**  
Employer

**APPEAL 17A-UI-11860-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/23/17**  
**Claimant: RESPONDENT (4R)**

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:**

The employer filed an appeal from the Statement of Charges dated November 9, 2017 for the third quarter of 2017. The parties were properly notified about the hearing. A telephone hearing was held on December 12, 2017. Claimant did not participate. Employer participated through Michelle Burnside, General Manager. Employer's Exhibit 1 was entered into the record.

**ISSUE:**

Did the employer file a timely appeal to the third quarter 2017 statement of charges?

**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 on August 2, 2017. The employer received the notice of claim and prepared a response. The employer faxed their notice of protest into Iowa Workforce Development Department on August 9, 2017. It appears that the agency never received the employer's notice of protest. The employer filed a timely appeal to the statement of charges on November 18, 2017. The issue of the reason for the claimant's separation from this employer has 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.

The administrative law judge concludes that the employer filed its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law. The employer did file a notice of protest on August 9, but it was not received by the agency. The employer's appeal of that Statement within thirty days is timely. The issue as to the reason for the claimant's separation from employment is remanded to the claims section of Iowa Workforce Development for an initial investigation and determination.

**DECISION:**

The November 9, 2017, Statement of Charges for the third quarter of 2017 is timely but the charge is moot until the separation issue is resolved because the employer did file a timely notice of protest.

**REMAND:**

The issue of the reason for the separation is remanded to the unemployment insurance service center section of Iowa Workforce Development for an initial investigation and determination.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

tkh/rvs