

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DENISHA N HARRIS
Claimant

ROSS HOLDINGS LLC
Employer

APPEAL 16A-UI-06373-SC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/02/15
Claimant: Respondent (4)

Iowa Code Chapter 96 – Requalification
Iowa Code § 96.6(2) – Timeliness of Protest

STATEMENT OF THE CASE:

Ross Holdings, LLC (employer) filed a timely appeal from the June 3, 2016, (reference 07) unemployment insurance decision that found the protest untimely and allowed benefits to Denisha N. Harris (claimant). After due notice was issued, a hearing by telephone conference call began on June 24, 2016 and concluded on July 13, 2016. The claimant did not participate. The employer participated through Director of Operations Shannon Schmidt. Employer's Exhibit 1 was received. Department's Exhibit D-1 was received. The administrative law judge took official notice of the administrative record, including the fact-finding documents and the claimant's wage information.

ISSUES:

Is the employer's protest timely?

Has the claimant requalified for benefits since the separation from this employer?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The notice of claim for this claimant was electronically submitted to the employer's address of record on August 6, 2015. The employer did not receive the notice. The employer did not receive its statement of charges for the first, second, or third quarter of 2015 as its mailing address in the Iowa Workforce Development (IWD) system was incorrect.

On November 19, 2015, the employer contacted IWD on another matter. Administrative Assistant Wendi BJORHEIM learned the employer was not receiving its quarterly statement of charges. IWD then faxed BJORHEIM copies of the statements of charges for 2015, but did not include the backside of the documents which explained the employer's appeal rights. The most recent statement of charges had been mailed out November 9, 2015. BJORHEIM sent an email to Benefit Charges 2, an email address in the IWD Tax Bureau, the same day opposing the

charges for the claimant on the statement of charges. On November 23, 2015, IWD employee Lisa Kolontar responded that no protest had been received from the employer and it was properly being charged for the claimant's benefits. No further action was taken on Bjorheim's email.

In December 2015, the employer received notice of its 2016 tax rate which included the employer's appeal rights. On December 23, 2015, Director of Operations Shannon Schmidt sent a formal appeal to the Tax Bureau regarding the employer's tax rate and the information contained in the statement of charges. The appeal was not sent to the IWD Appeals Bureau and no hearing was scheduled for the appeal to the statement of charges. On June 3, 2016, the employer received the decision from IWD that it had not filed a timely protest to the claimant's claim for unemployment insurance benefits.

The claimant's weekly benefit amount for the claim with an original claim date of August 2, 2015 was \$88.00. She left the employer's employment in the first quarter of 2015. She then earned \$1,151.00 working for subsequent employers in the second quarter of 2015.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer filed a timely protest to the claimant's claim for unemployment insurance benefits.

Iowa Code § 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 § 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.]

The employer did not have an opportunity to protest the notice of claim because the notice was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The employer also did not receive its statement of charges. Once the employer received copies of the statement of charges, it had notice of the claimant's claim. The employer protested the claim and the statement of charges on the same day it first received notice of the

charges related to the claimant through Bjorheim's email. The employer was not given an appeal to the statement of charges and, within 30 days of the email from Kolontar, it filed a formal appeal to the tax rate and statement of charges. Therefore, the protest shall be accepted as timely.

The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed and the account of the employer shall not be charged.

DECISION:

The June 3, 2016, (reference 07) unemployment insurance decision is modified in favor of the employer. The employer has filed a timely protest and the claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer shall not be charged.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/pjs