

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**AUSTIN M STRONG**  
Claimant

**XSAND VIKING LC**  
Employer

**APPEAL 18A-UI-07454-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/03/17  
Claimant: Respondent (4)**

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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:**

XSand Viking LC (employer) filed an appeal from the Statement of Charges dated July 6, 2018, for the first quarter of 2018. A hearing was scheduled for August 1, 2018, pursuant to due notice. The employer responded to the hearing notice instructions but no hearing was held as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

**ISSUES:**

Did the employer file a timely protest?

Did the employer file a timely appeal from the Statement of Charges?

Has the claimant requalified for unemployment insurance benefits since the separation from employment?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed his claim for benefits effective December 3, 2017 and his weekly benefit amount is \$207.00. He separated from the employer in the first quarter of 2017. The administrative record shows that after his separation and before filing his claim, he earned ten times the weekly benefit amount in insured wages.

The notice of claim was mailed to the employer's address of record on December 8, 2017 and contained a warning that a protest was due by December 18, 2017. On December 12, 2017, the employer faxed its protest to the number provided on the back of the notice of claim. The agency did not receive the notice of claim.

The first notice the employer received that the claimant was found to be eligible for unemployment insurance benefits chargeable to its account was the receipt of the Statement of Charges mailed July 6, 2018 for the first quarter of 2018. The employer filed its appeal of that

Statement of Charges on July 12, 2018. Agency records show a Statement of Charges was not mailed to the employer for the fourth quarter of 2017.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the employer filed a timely appeal from the Statement of Charges and the claimant has requalified for benefits. Benefits are allowed and the employer's account shall not be charged.

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 filed a protest in a timely manner on December 12, 2017 but the agency did not receive the fax transmission. The employer's first notice that the protest had not been received and its account was being charged was the Statement of Charges mailed on July 6, 2018. The employer timely filed its appeal of the Statement of Charges within thirty days. 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 July 6, 2018, Statement of Charges for the first quarter of 2018 is modified in favor of the appellant, which will appear as a credit to the employer's account on its Statement of Charges for the third quarter of 2018. The employer has filed a timely appeal from the Statement of Charges. 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 and a credit shall be issued on its Statement of Charges for the third quarter of 2018.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

src/rvs