

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

EUTIQUIO LOZANO

Claimant

MICHAEL R JOHANNINGMEIER

Employer

APPEAL 18A-UI-07937-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/03/17

Claimant: Respondent (1R)

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 July 16, 2018, for the first quarter of 2018. A hearing was scheduled and held on August 10, 2018, pursuant to due notice. Claimant did not register for the hearing and did not participate. Employer participated through Michael and Lori Johanningmeier. Official notice was taken of the administrative record.

ISSUES:

Did the employer file a timely protest?

Did the employer timely appeal from the Statement of Charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The Notice of Claim was mailed to the employer's address of record on December 6, 2017. The Notice of Claim was received at employer's address of record within the appeal period. Employer filed a protest on December 30, 2017, which is after the deadline of December 18, 2017. Employer marked on the form that claimant was still employed on a part-time basis. The protest was received by the agency. The agency did not issue a decision in response to the protest and has not issued any other decision in regard to whether claimant is eligible and employer will be charged for benefits in relationship to this employment.

On July 16, 2018, a Statement of Charges was mailed to employer for the first quarter of 2018. The Statement included charges for claimant's unemployment insurance benefits. Employer filed an appeal on July 23, 2018.

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.

In this case, employer's appeal from the Statement of Charges cannot be accepted as timely as it had prior notice of the claim. However, employer is contesting claimant's availability for work, asserting it is merely a supplemental employer and claimant remained employed at the same hours and wages. A determination regarding claimant's availability can be made on a week-by-week basis and can be contested at any time. Therefore, this matter will be remanded to the Benefits Bureau of Iowa Workforce Development for a decision on whether employer is a supplemental employer and claimant is still employed in the same way as before he filed the current claim and whether employer can therefore be relieved of benefit charges.

DECISION:

The July 16, 2018, Statement of Charges is affirmed pending a determination on whether claimant is still employed at the same hours and wages in this supplemental employment and employer's account can be relieved of charges.

REMAND:

The issues of whether employer is a supplemental employer and claimant is still employed in the same way as before he filed the current claim and whether employer can therefore be relieved of benefit charges are remanded to the Benefits Bureau of Iowa Workforce Development for an initial determination.

Christine A. Louis
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Decision Dated and Mailed

cal/scn