

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHRIS L CLINGAN
Claimant

CITY OF WINDSOR HEIGHTS
Employer

APPEAL 18A-UI-07375-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 03/04/18
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 for the first quarter of 2018 that was mailed on July 16, 2018. The parties were properly notified about the hearing. A telephone hearing was held on August 9, 2018. Claimant participated. Employer participated through administrator Elizabeth Hanson. City clerk Travis Cooke observed. Employer's Exhibit 1 was received.

ISSUES:

Did the employer timely appeal the Statement of Charges?
Is the Statement of Charges correct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits with an effective date of March 4, 2018. Employer protested the claim and Iowa Workforce Development issued a reference 01 decision on March 20, 2018, allowing claimant benefits based on his separation from employment. Employer did not appeal this decision and it has become final. Claimant received one benefit payment during the month of March 2018 in the gross amount of \$473.00.

Claimant also received unemployment insurance benefits during the month of April 2018, which falls in the second quarter of 2018.

On April 27, 2018, employer entered into a Last Chance Agreement with claimant where it agreed to bring him back to work. Employer did not compensate claimant with back pay for the month of April 2018. Instead, employer gave claimant 130 days of paid time off to add to his personal "bank." The paid time off was not paid out to claimant for the month of April 2018. Claimant did not use any of the paid time off during the month of April 2018. There has been no initial decision by the Iowa Workforce Development Benefits Bureau on whether the unused paid time off is deductible from claimant's unemployment insurance benefits.

REASONING AND CONCLUSIONS OF LAW:

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, the employer timely appealed the Statement of Charges within thirty days from when it was mailed. The employer had previous notice of the claim and protested the claim. Iowa Workforce Development issued a decision allowing benefits and employer did not appeal the decision. Claimant was entitled to benefits during the first quarter of 2018. Therefore, the Statement of Charges is correct.

During the hearing, the employer raised a separate issue of whether it should be charged for benefits during the second quarter of 2018 based on an award of 130 hours of unused paid time on April 27, 2018. No initial decision has been made by the agency on that issue. Therefore, it will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

DECISION:

The July 16, 2018, Statement of Charges for the first quarter of 2018 is affirmed. The Statement of Charges is correct.

REMAND:

The issue of whether employer's award to claimant of 130 hours of unused paid time off on April 27, 2018, that have not been paid out and have not been used is deductible from unemployment insurance benefits during April 2018 is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and decision.

Christine A. Louis
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Decision Dated and Mailed

cal/scn