

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

KRIS E MILLER
Claimant

APPEAL 23A-UI-07925-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CARROLL CDL TRAINING LLC
Employer

OC: 08/16/20
Claimant: Respondent (1-R)

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:

On August 14, 2023, Carroll CDL Training LLC (employer) filed an appeal from the statement of charges dated August 9, 2023, reference 01, for the second quarter of 2023. A hearing was held on August 31, 2023, pursuant to due notice. Kris E. Miller (claimant) participated. The employer participated through Administrator Julie Carroll. The department's Exhibits D1 through D1 and D2 were received.

ISSUES:

Was the employer's protest timely?
Was the employer's appeal from the statement of charges timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

The claimant filed a claim for unemployment insurance benefits with an effective date of August 16, 2020. This was a combined wage claim with his wages being transferred to South Dakota.

No notice of wage transfer was mailed to the employer from Iowa Workforce Development (IWD) in 2020, when the claimant filed his claim for benefits. The employer's first notice of the claim for transfer of wage credits was the receipt of the statement of charges mailed August 9, 2023, which listed charges for the quarter ending June 30, 2023. (Exhibit D1) The employer filed its appeal of that statement of charges on August 14, 2023. (Exhibit D2)

The employer intended to protest charges to its account. Specifically, Administrator Julie Carroll reported the claimant separated on July 26, 2019. The issue of whether the employer's account may be subject to charges has not been determined by the Benefits Bureau of IWD. Because this is a combined wage claim, the issue of whether the claimant was eligible for benefits is determined in the state for which the claim was filed, which was North Dakota.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer appropriately filed an appeal to the statement of charges because it did not receive the notice of wage transfer or any intervening statement of charges.

The separation issue shall be remanded to the Benefits Bureau for an initial determination with due process rights given to both parties.

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. [Emphasis added.]

Iowa Admin. Code r. 871-26.4 provides, in relevant part:

2. An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp after the decision was mailed to the party at its last-known address and shall state the following:

- a. The name, address and social security number of the claimant;
- b. A reference to the decision from which appeal is taken; and,
- c. The grounds upon which the appeal is based.

3. Notwithstanding the provisions of subrule 26.4(2), a contributory employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 30 days from the mailing date of the quarterly statement of benefit charges.

4. Also notwithstanding the provisions of subrule 26.4(2), a reimbursable employer, which has not previously received a notice of the filing of a valid claim for benefits, may appeal an individual's eligibility to receive benefits within 15 days of the mailing date of the quarterly billing of benefit charges.

In this case, the failure to file a timely protest to the notice of wage transfer was due to agency error or misinformation pursuant to Iowa Admin. Code r. 871-24.35(2) because no notice of wage transfer was sent to the employer when the claimant filed his August 16, 2020 claim. 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 because it did not receive any initial notice of wage transfer indicating the claimant had filed a claim for benefits in 2020. It also did not receive any intervening statements of charges between the notice of wage transfer and the statement of charges appealed.

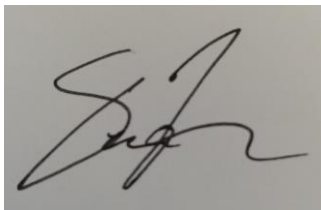
The employer's appeal of that statement of charges, which was done on August 14, 2023, is timely because it was filed within 30 days. The issue of whether the employer's account is chargeable for benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. The issue whether the claimant is eligible for benefits is determined by the State of North Dakota as this is a combined wage claim.

DECISION:

The August 9, 2023, reference 01, for the second quarter of 2023 is affirmed pending a determination on the remanded issue. The employer has filed a timely appeal from the August 9, 2023 statement of charges as no initial notice of wage transfer was sent to the employer in 2020 when the original claim was filed.

REMAND:

The issue of whether the employer's account may be subject to charges shall be remanded to the Benefits Bureau for an initial investigation and determination.



Sean M. Nelson
Administrative Law Judge II

September 5, 2023
Decision Dated and Mailed

SMN/jkb

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.