

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CANDY M CRONBAUGH
Claimant

APPEAL 19A-UI-00959-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**SOUTHEAST WARREN SCHOOL
DISTRICT**
Employer

**OC: 11/25/18
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(8)B(4) – Application for redetermination

STATEMENT OF THE CASE:

The employer filed an appeal from the notice of reimbursable benefit charges dated January 15, 2019 for the fourth quarter of 2018. The parties were properly notified about the hearing. A telephone hearing was held on February 19, 2019. Claimant participated. Employer participated through Julie A. Wilson, Business Manager, and Julie Ohnemus, Administrative Assistant. Official notice was taken of agency records.

ISSUES:

Is the employer's protest timely?
Did the employer timely appeal the notice of reimbursable benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer signed up to receive electronic notice of claims through the SIDES system on March 21, 2014. Julie Wilson is the business manager who receives the notices. Her correct e-mail address is julie.wilson@sc-warren.k12.ia.us. She is the only person who receives the notices of claims. She has received many notices of claims at the above e-mail address over the years.

On December 3, 2018 a notice of claim was e-mailed to Ms. Wilson at the correct e-mail address after the claimant filed a claim for unemployment insurance benefits. The agency's records show the e-mail having been sent, but never responded to by the employer. The e-mail was not returned as undeliverable. Ms. Wilson thinks that the e-mail may have been caught in the employer's SPAM or junk mail folder.

The employer received the notice of reimbursable benefit charges in a timely manner but did not file an appeal until February 4, 2019. Ms. Wilson was out of the office on bereavement leave the week the notice of charges was received and no one acted on her behalf to file an appeal. The employer wishes to protest the claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.7(8)B(4) provides:

8. Financing benefits paid to employees of nonprofit organizations.

b. Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

(4) The amount due specified in a bill from the department is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the department setting forth the grounds for the application. The department shall promptly review the amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

An employer who did not receive notice of the claim may appeal to the department for a hearing to determine the eligibility of an individual to receive benefits. Iowa Code section 96.7(2)a(6).

In this case, the employer did not file the appeal to the notice of reimbursable benefit charges within the 15-day deadline. The employer chose not to have anyone cover Ms. Wilson's duties while she was out of the office on bereavement leave. That was the employer's business decision not to have someone cover for Ms. Wilson during her absence. The employer's business decision is not a good cause reason for failure to file a timely appeal. No good cause has been established for the late filing of the appeal.

The additional issue is whether employer received notice of the claim. 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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of that court in that decision to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

By analogy to appeals from initial determinations, the ten day period for filing a protest is jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-

day period would be where notice to the protesting party was constitutionally invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the protester was deprived of a reasonable opportunity to assert the protest in a timely manner. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973).

The administrative law judge concludes that the employer did receive notice of the claim at the address it specified when it signed up to receive electronic notice of claims via the SIDES system and therefore it was not deprived of a reasonable opportunity to assert the protest in a timely fashion.

In summary, employer received prior notice of claim and had a reasonable opportunity to respond to it, but failed to do so in a timely manner. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand the case for a fact-finding interview. Iowa Code § 96.6(2). The charges will remain in effect and claimant is allowed benefits.

DECISION:

The January 15, 2019, notice of reimbursable benefit charges is affirmed. The employer did not file a timely protest to the notice of claim. The employer did not file a timely appeal to the notice of charges. The charges shall remain in full force and effect. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs