

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ELIZABETH WINDUP
Claimant

AREA EDUCATION AGENCY 11
Employer

APPEAL 21A-UI-15533-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 04/25/21
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:

On July 19, 2021, Area Education Agency 11 (employer) filed an appeal from the notice of reimbursable benefit charges dated July 15, 2021, which listed reimbursable benefit charge information for the second quarter of 2021. A telephone hearing was held on September 1, 2021, pursuant to due notice. Elizabeth Windup (claimant) did not participate. The employer did participate through Nia Chiaramonte, director of human resources. The Department’s Exhibit D1 was admitted. Official notice was taken of the administrative record.

At the hearing, employer raised the issue that claimant’s last name on file for the social security number listed is “Winjum” and not “Windup”. The employer’s phone number on file for the claimant is also one digit different than that on the claim file. Employer further stated claimant has not had any change in employment or separated. The email on file for the claim includes “Jamesblue”. If identity theft or fraud is suspected, the parties are directed to report it: <https://www.iowaworkforcedevelopment.gov/id-theft-form>

NOTE TO EMPLOYER:

If you wish to change the contacts of record, please access your account at:

<https://www.myiowaui.org/UITIPTaxWeb/>.

Helpful information about using this site may be found at:

<http://www.iowaworkforce.org/ui/uiemployers.htm> and

<http://www.youtube.com/watch?v= mpCM8FGQoY>

To update SIDES contact information, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>.

ISSUES:

Is the employer’s protest timely?

Did the employer timely appeal the notice of reimbursable charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: A claim was established for this claimant with an effective date of April 25, 2021. The notice of claim was provided to the employer in the SIDES system with an e-mail alert on April 27, 2021. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of May 7, 2021. The employer did not file a protest response to that notice of claim. Employer verified the two email contacts on file for SIDES were two employees who left employment two and three years ago. Employer did not believe the contact information had been updated to IWD for the SIDES claims. Consequently, the current employer contact responsible for handling the claims did not receive the claim alert.

The next notice of the claimant's claim for benefits was the receipt of the notice of reimbursable benefit charges mailed July 15, 2021 for the second quarter of 2021. The employer filed its first protest and appeal of the claimant's receipt of benefits on July 19, 2021, following the receipt of the notice of reimbursable benefit charges mailed July 15, 2021 for the second quarter of 2021 (See Department Exhibit D-1).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not file a timely protest to the notice of claim it received and it does not have appeal rights to the notice of reimbursable benefit charges.

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 provides, in relevant part:

Employer contributions and reimbursements.

7. Financing benefits paid to employees of governmental entities.

...

c. For purposes of this subsection, "governmental reimbursable employer" means an employer which makes payments to the department for the unemployment compensation fund in an amount equivalent to the regular and extended benefits paid, which are based on wages paid for services in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the department shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall

be made in accordance with subsection 8, paragraph "b", subparagraphs (2) through (5).

...

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.

(5) The provisions for collection of contributions under section 96.14 are applicable to reimbursements for benefits paid in lieu of contributions.

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.

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. IDJS*, 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. The employer filed its first protest after the deadline. The employer has not established that the delay was due was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). Employer has not updated its contacts with IWD for its SIDES claims and has two old contacts, who left employment two and three years ago. As the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

With regard to appeals from the notice of reimbursable benefits charges, Iowa Code section 96.7(2)a(6), which applies to contributory employers, provides guidance in the situation here, which deals with a reimbursable employer. It states that a contributory 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 following receipt of a statement of charges. While Iowa Code sections 96.7(7) and (8) which address reimbursable employers do not specifically state the reimbursable employers have appeal rights following the notice of reimbursable charges if they did not receive prior notice of the claim, Iowa Admin Code r. 871-26.4(4) allows for such an appeal.

When an employer receives a notice of claim and fails to protest in a timely manner, they do not have appeal rights to the notice of reimbursable benefit charges. In this case, the employer received the notice of claim and no longer has appeal rights to the notice of reimbursable benefit charges. The administrative law judge lacks jurisdiction to modify the charges to the employer's account.

DECISION:

The July 15, 2021 notice of reimbursable benefit charges for the second quarter of 2021 is affirmed. The employer did not timely protest the claimant's claim for benefits and the charges to the account are correct.



Jennifer L. Beckman
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September 8, 2021
Decision Dated and Mailed

jlb/scn