

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

---

**TRENTON L RIPPERGER**  
Claimant

**APPEAL 22A-UI-06603-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SCHILDBERG CONST CO INC**  
Employer

**OC: 12/27/20**  
**Claimant: Respondent (2R)**

---

Iowa Code § 96.6(2) – Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer/appellant filed an appeal from the March 14, 2022 (reference 01) unemployment insurance decision that found the employer's protest was untimely. The parties were properly notified of the hearing. A telephone hearing was held on April 25, 2022. The claimant did not participate. The employer participated through witness Katherine Sherer. Department's Exhibit D1 was admitted. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

**ISSUE:**

Did the employer file a timely protest?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits effective December 27, 2020 following a short-term layoff from this employer. He filed a weekly-continued claim for benefits for the week ending January 2, 2021. A Notice of Claim was mailed to the employer and the employer returned the Statement of Protest noting that it was not protesting the claim for benefits and listed holiday pay made to the claimant. See Exhibit D1.

Claimant filed an additional claim for benefits effective February 7, 2021 when he was off of work due to weather conditions. This employer was mailed a Notice of Claim dated February 16, 2021 regarding the additional claim filing and the Notice of Claim stated that the claimant was re-filing effective February 7, 2021 as a temporary layoff. Claimant's administrative records establish that the employer did not return a response to this Notice of Claim dated February 16, 2021; however, Ms. Sherer testified that the employer was not protesting any charges for benefits during the weekly-claims filed for the week-ending February 13, 2021 and February 20, 2021 as the claimant was off of work due to weather conditions.

Claimant separated from employment with this employer on March 19, 2021; presumably to work for another employer. In the attachment to its appeal letter, the employer included a copy of an email that was sent to Iowa Workforce Development on March 23, 2021 notifying the agency that the claimant had separated from employment by voluntarily quitting on March 19, 2021.

Claimant then filed another additional claim for benefits effective October 24, 2021. Claimant's administrative records establish that this employer was never notified by virtue of a Notice of Claim that an additional claim for benefits effective October 24, 2021 was filed. Claimant filed a weekly-continued claim for benefits for the week-ending October 30, 2021. Claimant then filed another additional claim for benefits effective December 12, 2021. Claimant's administrative records establish that this employer was not mailed a Notice of Claim for the additional claim for benefits effective December 12, 2021. Claimant filed weekly-continued claims for benefits for the week-ending December 18, 2021 and December 25, 2021. His benefit year then expired on December 26, 2021. No decision stating that the claimant had earned ten times his weekly-benefit amount since separation was issued and no investigation regarding the claimant's separation from employment with this employer during his December 27, 2020 claim year was conducted by the agency.

On February 9, 2022, the employer was mailed a Statement of Charges which listed charge information for the fourth quarter of 2021. It listed charges to the employer's account of \$986.00 during the fourth quarter of 2021 (for the weeks in October and December of 2021). On February 14, 2022, the employer mailed in an appeal to that Statement of Charges dated February 9, 2022, which, to date, has not been docketed with the Appeals Bureau.

#### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes as follows:

Iowa Code section 96.6(2) provides:

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

The portion of this 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.

Iowa Admin. Code r. 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States postal service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted by any means other than the United States postal service on the date it is received by the division.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

b. The division shall designate personnel who are to decide whether an extension of time shall be granted.

c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.

d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

In this case, the employer was never mailed a Notice of Claim when the claimant filed his additional claims on October 24, 2021 and December 12, 2021. It had no way to know that the employer may be charged for benefits for weeks after claimant's permanent separation from employment that had already occurred. The employer had already notified the agency by email that the claimant had separated from employment on March 19, 2021; however, no fact-finding investigation occurred regarding the claimant's separation from employment with this employer. No decision releasing the employer from charges for benefits for the December 27, 2020 claim year was issued at any time.

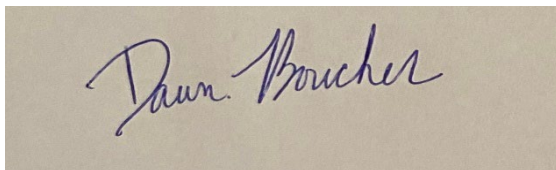
An employer cannot be expected to file a timely protest to a notice of additional claim when it was never mailed the Notice of additional claim for October 24, 2021 to begin with. As such, the employer did not file an untimely protest and the matter of the separation from employment with this employer on or about March 19, 2021 shall be remanded to the Benefits Bureau for an investigation and determination.

**DECISION:**

The March 14, 2022 (reference 01) unemployment insurance decision is reversed. The employer's protest was not untimely because it never received a Notice of Claim for the additional claim filed October 24, 2021 or December 12, 2021. As such, the March 19, 2021 separation from employment with this employer and whether the claimant earned ten times his weekly-benefit amount after the separation shall be remanded for an investigation and determination.

**REMAND:**

The issue of whether the claimant's March 19, 2021 separation from this employer was disqualifying and whether the employer's account is subject to charges after March 19, 2021 is remanded to the Benefits Bureau for an initial investigation and determination. The Benefits Bureau shall also review to determine whether the claimant earned ten times his weekly-benefit amount after any disqualifying separation from employment with this employer but prior to his October 24, 2021 additional claim filing.

A rectangular box containing a handwritten signature in blue ink that reads "Dawn Boucher".

---

Dawn Boucher  
Administrative Law Judge

May 2, 2022  
Decision Dated and Mailed

db/db