

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

MARGIE J. STONE

Claimant

HEARTLAND HOME CARE INC.

Employer

APPEAL 22A-UI-12864-CS-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/28/21

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:

On May 20, 2022, Heartland Home Care Inc. (employer) filed an appeal from the statement of charges dated May 9, 2022, reference 01, for the first quarter of 2022. A hearing was held on July 12, 2022, pursuant to due notice. Margie J. Stone (claimant) did not participate. The employer participated through Tami Wickencamp. The department's Exhibits D-1 through D-4 were admitted into the record.

ISSUES:

- I. Was the employer's protest timely?
- II. 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 began having reduced hours around Thanksgiving 2021 and filed a claim for benefits effective November 28, 2021. The notice of claim was sent to the employer through the SIDES system on December 3, 2021. (Exhibit D-1) The employer was required to respond by December 13, 2021. The employer received the notice and responded through SIDES on December 8, 2021. A decision was not mailed to the parties regarding claimant's benefits.

The employer received the receipt of the statement of charges mailed February 9, 2022 for the fourth quarter of 2021. The employer did not appeal the statement of charges because they did not object to claimant receiving benefits since she was receiving reduced hours.

The employer then received the statement of charges mailed May 9, 2022, for the first quarter of 2022. The employer observed the substantial increase in charges for claimant and disputes that claimant was entitled to receive the benefits because her hours had increased. On May 11, 2022, the employer reached out to Iowa Workforce Development's (IWD) claim department to dispute the charges. The claims department responded to employer on May 13, 2022, and referred the employer to IWD's benefits bureau. On May 18, 2022, the benefits bureau contacted employer

and informed it regarding the process to appeal the statement of charges. The employer filed its appeal of that statement of charges on May 20, 2022.

The issue of whether the claimant's has reduced hours beginning November 28, 2021, and whether claimant has accurately reported her wages has not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's protest is timely and employer's appeal from the statement of charges is timely.

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

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.

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.

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.

The employer filed its protest within the time period prescribed by the Iowa Employment Security Law. As a result, the employer's protest is timely. IWD did not issue a decision on claimant's eligibility after the protest. When the employer received its statement of charges for the first quarter of 2022 it disputed the amount of benefits claimant received because claimant was working full time hours again. The employer filed its appeal of the statement of charges on May 20, 2022. This is within the thirty-day period to file an appeal. As a result, the employer's appeal of the first quarter of 2022 is timely.

The issue of whether the claimant worked reduced hours beginning November 28, 2021, and whether she accurately reported her wages is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision.

DECISION:

The May 9, 2022, reference 01, statement of charges for the first quarter of 2022 is affirmed, pending the outcome of the remanded issue. The employer has filed a timely protest.

REMAND:

The issue of whether the claimant worked reduced hours beginning November 28, 2021, and has accurately reported her wages is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision.

A handwritten signature in cursive script that reads "Carly Smith". The signature is written in black ink on a light-colored background.

Carly Smith
Administrative Law Judge

September 13, 2022
Decision Dated and Mailed

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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.