

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

PIERRE BURKE
Claimant

SEDONA STAFFING INC
SEDONA GROUP
Employer

APPEAL NO. 23A-UI-08169-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 02/19/23
Claimant: Respondent (2)

Iowa Code Section 96.6(2) - Timeliness of Protest
Iowa Code Section 96.7(2)(a)(6) – Appeal from Statement of Charges

STATEMENT OF THE CASE:

On August 22, 2023, the employer filed an appeal from the Statement of Charges that Iowa Workforce Development mailed to the employ on August 9, 2023. The Statement of Charges included a charge for benefits paid to the claimant during the calendar quarter that ended June 30, 2023. After due notice was issued, a hearing was held on September 13, 2023. Pierre Burke (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Colleen McGuinty represented the employer. Exhibits 1 and 2 were received into evidence. The administrative law judge took official notice of the following agency administrative records: the notice of claim/protest, the reference 01 and 02 decisions, DBRO, WAGEA, NMRO, KCCO, IBIQ, the Notice of Wage Transfer and supporting documents, and the Statement of Charges that Iowa Workforce Development mailed to the employ on August 9, 2023.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.
Whether the employer filed a timely appeal from the Statement of Charges.
Whether the Statement of Charges is correct.

FINDINGS OF FACT:

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

IWD records reflect that claimant Pierre Burke took steps toward establishing both an Iowa claim for benefits and a Wisconsin claim for benefits, each with a February 19, 2023 original claim date. Iowa Workforce Development records reflect that Iowa Workforce Development requested wage information from the State of Wisconsin for inclusion in an Iowa combined wage claim and also responded to the State of Wisconsin's request for Iowa wages to be included in a Wisconsin combined wage claim. The claimant made an Iowa weekly claim for the week that ended February 25, 2023 and later made Wisconsin weekly claims in connection with the same original claim date. IWD records (DBRO) reflect that Iowa ultimately transferred wages to Wisconsin for inclusion in the Wisconsin combined wage claim.

The claimant's base period for purposes of the Iowa claim and the Wisconsin combined wage claim consisted of the fourth quarter of 2021 and the first, second and third quarters of 2022. IWD records (DBRO) reflect the employer paid \$2,523.30 in wages to the claimant during the fourth quarter of 2021, \$2,202.02 in wages to the claimant during the first quarter of 2022, and \$1,799.15 in wages to the claimant during the second quarter of 2022. IWD records reflect base period wages credits of \$841.10, \$734.01, and \$599.72 for the respective quarters. These Iowa base period wage credits total \$2,174.83.

On February 24, 2023, Iowa Workforce Development mailed a notice of claim concerning the above claimant's Iowa claim to the employer's address of record. The notice of claim set an Iowa weekly benefit amount at \$109.00 and stated the employer's maximum liability on the claim at \$2,174.83. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was March 6, 2023.

On March 1, 2023, the employer faxed a completed notice of claim form/protest to Iowa Workforce Development. The employer noted a May 8, 2022 voluntary quit date on the notice of claim/protest form. IWD Customer Service date-stamped the Notice of Claim form as received by Iowa Workforce Development on March 1, 2023.

On March 6, 2023, Iowa Workforce Development issued a reference 01 decision. The reference 01 decision allowed benefits to the claimant, provided the claimant was otherwise eligible. The reference 01 decision also held the employer's account would not be charged for benefits. The reference 01 decision stated the claimant had earned 10 times his weekly benefit amount after a disqualifying separation from this employer. The reference 01 decision stated that wage credits in the amount of \$2,175.00 earned during the period of 10/01/21 until 5/8/22 would be charged to the unemployment compensation fund.

On March 21, 2023, Iowa Workforce Development mailed a Notice of Wage Transfer to the employer's address of record. The Notice of Wage Transfer included a 10-day deadline for the employer to protest inclusion of base period wages earned with the employer in wages to be transferred to Wisconsin. The employer does not recall receiving the Notice of Wage Transfer. A subsequent IWD decision indicates that the employer either filed a timely protest in response to the March 21, 2023 Notice of Wage Transfer or that IWD treated the earlier protest as also a timely protest of the Notice of Wage Transfer.

On March 28, 2023, Iowa Workforce Development issued a reference 02 decision to the employer and to the claimant. The reference 02 decision stated:

Decision:

You have been relieved of charges on this claim.

Explanation of Decision:

You have protested charges to your account for the claimant listed above. The separation occurred on 05/28/22. Your account has been relieved of charges based on the information you furnished.

Note to Employer:

This decision affects only charges to your Iowa account based on wages transferred to another state. The claimant's benefits will be determined by the other state in accordance with their laws. If you receive a claim notice from the other state and wish to

protest the payment of benefits, you should respond to the notice. If you receive any other notices from Iowa at a future date, you should respond at that time.

The reference 02 decision cited Iowa Administrative Code rule 871-23.43(9)(a) as the legal authority for the decision. The rule states as follows:

23.43(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

On August 9, 2023, IWD mailed a Statement of Charges to the employer that included a \$368.84 charge to the employer's account for benefits paid to the claimant during the calendar quarter ending June 30, 2023. The benefits were paid by the State of Wisconsin in connection with the Wisconsin combined wage claim. The employer received the Statement of Charges in a timely manner. On August 22, 2023, the employer filed an appeal from the Statement of Charges by fax. The Appeals Bureau erroneously docketed the appeal as received on August 23, 2023.

REASONING AND CONCLUSIONS OF LAW:

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. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the court 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 Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or a Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

Iowa Administrative Code Rule 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 via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 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.

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 rule 871-26.4(3) provides:

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.

On March 1, 2023, the employer filed a timely protest from the notice of claim that IWD mailed to the employer on February 24, 2023 in connection with the Iowa claim for benefits.

The March 6, 2023 (reference 01) 10-times requalification decision relieved the employer's account of liability in connection with the Iowa claim.

The March 28, 2023 (reference 02) decision relieved the employer's account of liability for benefits in connection with the Wisconsin claim. The reference 02 decision cited Iowa Administrative Code rule 871-23.43(9)(a) as the legal authority for the decision. The rule states as follows:

23.43(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa

Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

Though the August 9, 2023 Statement of Charges was not the employer's first notice of the claim for benefits, the employer's challenge to the Statement of Charges was nonetheless timely.

Based on the timely protest, the decisions relieving the employer's account of liability for benefits in connection the Iowa claim and the Wisconsin combined wage claim, and the timely challenge to the August 9, 2023 Statement of Charges, the administrative law judge concludes the \$368.84 charge to the employer's account for benefits paid to the claimant during the quarter that ended June 30, 2023 was in error. Accordingly, the charge to the employer's account is reversed and the \$368.84 amount shall be credited to the employer's account.

DECISION:

Based on the timely protest, the decisions relieving the employer's account of liability for benefits in connection the Iowa claim and the Wisconsin combined wage claim, and the timely challenge to the August 9, 2023 Statement of Charges, the \$368.84 charge to the employer's account for benefits paid to the claimant during the quarter that ended June 30, 2023 was in error. Accordingly, the charge to the employer's account is REVERSED and the \$368.84 amount shall be credited to the employer's account.



James E. Timberland
Administrative Law Judge

September 18, 2023
Decision Dated and Mailed

JET/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>.

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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.