

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ANGELA MELTON
Claimant

APPEAL 20A-UI-01300-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DAVID WRIGHT NISSAN SUBARU INC
Employer

OC: 11/03/19
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

The employer/appellant, Dave Wright Nissan Subaru Inc., filed an appeal from the Statement of Charges dated February 7, 2020, for the fourth quarter of 2019. After proper notice, a telephone hearing was conducted on March 2, 2020. The claimant, Angela Melton, participated personally. The employer was represented by Dave Wright, owner. Department Exhibit D-1 (Employer Appeal) was admitted into evidence. The administrative law judge took official notice of the administrative records. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUES:

Did the employer file a timely protest of the claim?

Did the employer file a timely appeal from a quarterly statement of benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant established a claim for benefits with an effective date of November 3, 2019.

On November 5, 2019, a notice of claim was mailed to the employer's address of record. Mr. Wright received the notice of claim on November 7, 2019, within the prescribed period to protest. The notice of claim stated, "[a]s an employer of this claimant within the past 18 months from the effective date of claim, your account may receive charges based upon wages you have paid this claimant unless you provide Iowa Workforce Development with information justifying relief from such charges. Any benefits paid may result in a rate increase to your account."

On November 7, 2019, Mr. Wright filled out and signed the notice of protest. He gave it to Melanie Brewer, administrative assistant, to fax on behalf of the employer. Mr. Wright stated he believed Ms. Brewer faxed the notice of claim in and sent the fax on November 8, 2019 based upon a handwritten note made across the top of the notice of claim (Department Exhibit D-1). There is no evidence of which fax number was used. The employer did not receive or furnish a

fax confirmation. Ms. Brewer did not attend the hearing to offer testimony under oath about when she faxed the notice of claim protest. There is no record from IWD that the fax was received on November 8, 2019 or thereafter.

The employer did not follow up with IWD when it did not receive a notice of fact-finding interview or initial decision, which occurs after a notice of protest is received and processed by IWD.

On February 7, 2020, IWD sent the employer a fourth quarter of 2019 statement of benefit charges notifying the employer that the claimant benefits charged to the employer's account. The notice was sent to the employer's address of record and was received by the employer. The employer filed an appeal to the statement of charges on February 13, 2020 (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 and as such, the conditions for appealing the statement of charges have not been met.

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(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 Code section 96.7(2)a(6), states that 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. An employer is only allowed to appeal the statement of charges for a hearing to determine the eligibility of the individual to receive benefits if they were not previously notified pursuant to Iowa Code § 96.6(2) of the allowance of benefits.

The employer did timely receive the notice of claim (Wright testimony). The employer stated it filed a timely protest by fax on November 7, 2019. IWD did not receive a notice of protest from the employer.

When a protest is received, the rules require that Workforce Development mail to the parties notice of a fact finding conference, that such a conference be held, and then that a determination be made regarding the protest. Iowa Admin. Code r. 871 - 24.9. Regular proceeding by the agency would have meant that the protest would be retained, a protest would be docketed, a fact finding interview would be scheduled and held, and a decision would be issued. None of this occurred because no protest was received. Had a protest been received prior to May 12, 2014, the regular process should have been triggered, but it was not. "The proceedings of all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular". Iowa Code §622.56; accord *City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982). Thus, there is a presumption, from Workforce Development having no record of a protest by the employer, that no protest was received by Workforce. This is not an absolute presumption, but is instead a presumption that may be overcome with sufficiently probative evidence.

Based on the evidence presented, the administrative law judge concludes that the employer did not supply evidence sufficient to overcome the presumption. The employer witness testified that the protest was sent by fax by Melanie Brewer on November 8, 2019. Ms. Brewer did not attend the hearing to provide testimony under oath about filing the protest. The employer provided no transmission report, no phone records, no fax cover sheet pertaining to the purported October fax. Nor did the employer provide any computer records of desktop faxes coupled with testimony of a well-established corporate procedure for handling such faxes, which may have been considered sufficient. The employer had no proof that Ms. Brewer sent the protest on November 8, 2019 to a valid IWD number via fax.

Further, it cannot be ignored that after the employer reportedly sent in the fax on November 8, 2019, it did nothing for three months. Had a protest been sent, one might expect a call from Workforce Development before three months were up. The notice of claim says as much. (See Department Exhibit D-1). Weighing the evidence carefully, the administrative law judge concludes that the protest was not timely filed because it was not in fact received by Workforce Development on November 8, 2019.

Based upon the evidence presented, the administrative law judge concludes the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met. The employer was not deprived of a reasonable opportunity to assert the protest in a timely fashion. Therefore, the administrative law judge concludes that the employer appeal to the first quarter statement of charges is untimely. The February 7, 2020 Statement of Charges for the fourth quarter of 2019 is affirmed and remains in effect.

DECISION:

The February 7, 2020 Statement of Charges for the fourth quarter of 2019 is affirmed and remains in effect.

Jennifer L. Beckman
Administrative Law Judge
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Decision Dated and Mailed

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