

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

JESSICA MCGRAW
Claimant

ATLANTIC BOTTLING CO
Employer

APPEAL 23A-UI-01820-LJ-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 09/18/22
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 February 20, 2023, Atlantic Bottling Company (employer) filed an appeal from the statement of charges dated February 9, 2023, reference 09, for the fourth quarter of 2022. A hearing was held at 10:00 a.m. on Friday, March 10, 2023, pursuant to due notice. Jessica McGraw (claimant) personally participated in the hearing. The employer participated through Shirley Jones, Human Resources Business Partner. The department's Exhibits D1 through D5 were received. The administrative law judge now takes official notice of the administrative record for the purpose of developing a complete record for remanding to the Benefits Bureau.

ISSUES:

Was the employer's protest timely?
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 separated from employment on September 6, 2022 and filed a claim for benefits effective September 18, 2022. The notice of claim was provided to the employer in the SIDES system with an e-mail alert on September 23, 2022. The emails sent by SIDES go to the human resources mailbox, accessed by all four members of the employer's human resources staff. However, due to new security software installed by the employer's IT department (unbeknownst to the HR department), the SIDES notices were being unintentionally withheld from the inbox. 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 October 3, 2022. The employer did not file a protest response to that notice of claim.

The next notice of the claimant's claim for benefits was the receipt of the statement of charges mailed February 9, 2023 for the fourth quarter of 2022. Jones immediately gave the statement of charges to the Vice President and noted she had not received either a notice of claim or an eligibility decision. The employer filed its first protest and appeal of the claimant's receipt of benefits on February 20, 2023, following the receipt of the statement of charges.

Once the employer learned of the claimant's claim for benefits, and it learned from IWD that a notice of claim had been sent through SIDES, it learned that its security filters were accidentally unintentionally filtering out "safe" emails such as email alerts from SIDES. No emails from the online SIDES system were getting through the new software's filter. After the IT department adjusted the settings on its security software, the employer discovered it had missed five emails from SIDES.

Claimant testified that she reported "discharge" was the reason for her separation from employment when she filed her claim for unemployment insurance benefits. Claimant's "DBRO" screen in IWD's mainframe system shows that she reported her separation reason was "layoff due to a lack of work." The Benefits Bureau did not hold a fact-finding interview or issue an unemployment insurance decision regarding claimant's eligibility for benefits.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, 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 statement of 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(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. [Emphasis added.]

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). 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).

Iowa Code section 96.7(2)a(6) 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. In other words, when an employer receives a notice of claim and fails to protest in a timely manner, they do not have appeal rights to the statement of charges. In this case, the employer received the notice of claim and no longer has appeal rights to the statement of charges. The administrative law judge lacks jurisdiction to modify the charges to the employer's account.

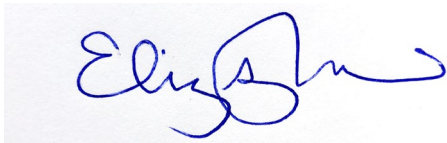
Claimant's claim information states she reported she was laid off due to a lack of work, yet she testified that she was discharged by the employer due to misconduct. If claimant had reported she was discharged, the Benefits Bureau would have automatically scheduled a fact-finding interview to discuss the separation and then issued a determination regarding eligibility. This matter will be remanded to the Benefits Bureau to determine if further action is appropriate.

DECISION:

The February 9, 2023, reference 09, statement of charges for the fourth quarter of 2022 is affirmed. The employer did not timely protest the claimant's claim for benefits and the charges to the account are correct.

REMAND:

This matter is remanded to the Benefits Bureau of IWD to determine whether further action is appropriate, given the facts set forth in the decision above.



Elizabeth A. Johnson
Administrative Law Judge

March 13, 2023
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.