

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

ETHAN VELASQUEZ

Claimant

APPEAL NO. 23A-UI-08160-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 05/28/23

Claimant: Respondent (1R)

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 23, 2023, the employer filed an appeal from the August 9, 2023 Statement of Charges that included a \$197.00 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 12, 2023. 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. Steve Volle represented the employer. Exhibits 1 through 4 were received into evidence. The administrative law judge took official notice of the following Agency administrative records: DBRO, DBIN, WAGEA, NMRO, the June 2, 2023 SIDES notice of claim and June 9, 2023 SIDES protest, the March 30, 2022 (reference 03, o.c. 03/06/22) decision, the June 9, 2023 (reference 01, o.c. 05/28/23) decision, and the August 9, 2023 Statement of Charges.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.

Whether there is good cause to deem the employer's late protest as 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:

This present matter concerns the original claim that was effective May 28, 2023, but requires findings of fact pertaining to an earlier, March 6, 2022 original claim.

Ethan Velasquez (claimant) established an original claim that was effective March 6, 2022. Iowa Workforce Development set the weekly benefit amount at \$145.00. The base period for purposes of the March 6, 2022 original claim consisted of the fourth quarter of 2020 and the first, second, and third quarters of 2021. Advance Services, Inc. (employer account number 279311) was a base period employer. The claimant's base period wages and wage credits are documented in the database readout (DBIN) as follows:

WAGE RECORDS **CLAIM EFFECTIVE DATE- 03/06/22 **

ACCT	LOC	Q/Y	TYPE	EARNINGS	CREDIT	AMT-CHGD	R/C	DET-DATE
279311	000	3/21	REGULAR	3339.00	1113.00	.00	C	03/07/22
000000	000	2/21	OTHER	2189.72	729.91	.00	C	03/10/22
168629	000	2/21	DEL-PRIR	2189.72	729.91	.00	C	03/07/22
279311	000	2/21	REGULAR	896.00	298.67	.00	C	03/07/22

One can see in the IWD record that Advance Services paid the claimant \$896.00 in wages during the second quarter of 2021 and \$3,339.00 in wages during the third quarter of 2021. The corresponding wage credits for the respective quarters are \$298.67 and \$1,113.00.

On March 30, 2022, IWD Benefits Bureau issued a reference 03 (o.c. 03/06/22) decision that disqualified the claimant for benefits and that relieved the employer of liability for benefits, based on the deputy's conclusion the claimant voluntarily quit on February 16, 2022 without good cause attributable to the employer. The reference 03 decision stated the claimant would remain disqualified for benefits until the claimant earned wages for insured work equal to 10 times his weekly benefit amount and required the claimant to meet all other eligibility requirements. Advance Services was not charged for benefits in connection with the benefit year that began March 6, 2022.

After the claimant's February 16, 2022 separation from the Advance Services employment, the claimant returned to perform additional work for Advance Services during two distinct periods. The claimant performed work for the employer during the period of May 11, 2022 through June 24, 2022 and during the period of October 17, 2022 through January 5, 2023. Neither the June 24, 2022 separation nor the January 5, 2023 separation had been adjudicated by IWD. In the course of each of these additional periods of employments with Advance Services the claimant earned more than 10 times the \$145.00 weekly benefit amount.

The claimant established a new original claim (new benefit year) that was effective May 28, 2023. Iowa Workforce Development set the weekly benefit amount at \$197.00. IWD paid \$197.00 to the claimant for the week that ended June 3, 2023. This was the only benefit payment made to the claimant in connection with the claim and the only benefit payment made during the calendar quarter that ended June 30, 2023.

The base period for purposes of the May 28, 2023 original claim consists of the four quarters of 2022. Advance Services, Inc. is the sole base period employer. The base period wages, wage credits, and charges to the employer's account are reflected in the database readout (DBRO) as follows:

WAGE RECORDS **CLAIM EFFECTIVE DATE- 05/28/23 **

ACCT	LOC	Q/Y	TYPE	EARNINGS	CREDIT	AMT-CHGD	R/C	DET-DATE
279311	000	4/22	REGULAR	4552.50	1517.50	197.00	C	06/01/23
279311	000	3/22	REGULAR	468.75	156.25	.00	C	06/01/23
279311	000	2/22	REGULAR	2404.00	801.33	.00	C	06/01/23
000000	000	1/22	OTHER	3970.00	1323.33	.00	C	06/09/23
279311	000	1/22	DEL-PRIR	3970.00	1323.33	.00	C	06/01/23

The employer has elected to receive electronic notice of claims. In response to the May 28, 2023 original claim, IWD issued a notice of claim to the employer via SIDES on June 2, 2023. The notice of claim included a June 12, 2023 deadline for the employer's response. On June 9, 2023, the employer filed a protest via SIDES. In the SIDES protest, the employer referenced a January 5, 2023 employment separation date.

IWD did not schedule a fact-finding interview in response to the employer's June 9, 2023 protest regarding the May 28, 2023 original claim.

Instead, IWD issued a June 9, 2023 (reference 01, o.c. 05/28/23) 10-times requalification decision. The reference 01 decision cites the requalification provisions in Iowa Code section 96.5(1)(g) and 96.5(2)(a) as legal authority for the reference 01 decision. The reference 01 decision held the claimant was eligible for benefits in connection with the May 28, 2023 original claim, provided the claimant met all other eligibility requirements. The reference 01 decision acknowledged that since the February 16, 2022 disqualifying separation, and prior to the May 28, 2023 original claim, the claimant had earned 10 times his weekly benefit from new employment. The reference 01 decision stated that \$1,323.00 in wages credits earned during the period of January 1, 2022 through February 16, 2022 would be charged to the unemployment compensation fund. That information qualified the statement earlier in the decision that Advance Services, Inc. would not be charged for benefits paid. In other words, the reference 01 decision did not, and could not, transfer wage credits or relieve the employer of liability for benefits that were based on base period wages earned after the February 16, 2022 separation, during the second, third and fourth quarters of 2022.

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.

The findings of fact set forth the relevant actions, decisions and events pertaining to the employer's relief of liability in connection with the February 16, 2022 disqualifying separation and wage credits transferred based due to that disqualifying separation. But the decisions pertaining to that set of issues does not address employer liability or claimant eligibility based on the subsequent periods of employment or the wages earned in connection with those subsequent periods of employment, including the January 5, 2023 most recent separation.

On June 9, 2023, the employer filed a timely protest in response to the June 2, 2023 notice of claim pertaining to the May 28, 2023 original claim. IWD erred by not holding a fact-finding interview and by not entering a decision that addressed the most recent separation on January 5, 2023.

Because the August 9, 2023 Statement of Charges was not the employer's first notice of the May 28, 2023 original claim, the administrative law judge need not further consider the timeliness of the appeal from the August 9, 2023 Statement of Charges.

The matter will be remanded to IWD Benefits Bureau for a fact-finding interview and decision that addresses the January 5, 2023 separation, including the impact on the claimant's eligibility for benefits and the employer liability for benefits. The \$197.00 charge to the employer's account is affirmed pending remand and adjudication of the January 5, 2023 separation. IWD may also wish to address the June 24, 2022 separation referenced in the employer's testimony.

DECISION:

The employer filed a timely protest in response to the June 2, 2023 notice of claim pertaining to the May 28, 2023 original claim. Because the August 9, 2023 Statement of Charges was not the employer's first notice of the May 28, 2023 original claim, the administrative law judge need not further consider the timeliness of the appeal from the August 9, 2023 Statement of Charges. This matter will be remanded to IWD Benefits Bureau for a fact-finding interview and decision that addresses the January 5, 2023 separation, including the impact on the claimant's eligibility for benefits and the employer liability for benefits. The \$197.00 charge to the employer's account is affirmed pending remand and adjudication of the January 5, 2023 separation. IWD may also wish to address the June 24, 2022 separation referenced in the employer's testimony.

REMAND:

This matter is REMANDED to IWD Benefits Bureau for a fact-finding interview and decision that addresses the January 5, 2023 separation, including the impact on the claimant's eligibility for benefits and the employer liability for benefits. IWD may also wish to address the June 24, 2022 separation referenced in the employer's testimony.

A handwritten signature in black ink that reads "James E. Timberland". The signature is written in a cursive, flowing style.

James E. Timberland
Administrative Law Judge

September 22, 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>.

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.