

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MOHAMED HUSSIN
Claimant

SYSTEMS UNLIMITED INC
Employer

APPEAL 22A-UI-10046-JC-T
ADMINISTRATIVE LAW JUDGE
DECISION

OC: 11/21/21
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(8)B(4) – Application for Redetermination

STATEMENT OF THE CASE:

On January 20, 2022, Systems Unlimited Inc. (employer) filed an appeal from a January 15, 2022, notice of reimbursable benefit charges for the fourth quarter of 2021. A hearing was held on May 12, 2022, pursuant to due notice. Mohamed Hussin (claimant) did not respond to the hearing notice and did not participate. The employer participated through Jenny O'Brien, HR Manager. Official notice was taken of the administrative records. Department Exhibit 1 was admitted.

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: Claimant filed his claim for unemployment insurance benefits with an effective date of November 21, 2021, due to a temporary separation.

The notice of claim was mailed to the employer's address of record on November 24, 2021. The notice of claim contained a due date of December 6, 2021. The notice of claim also 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." The employer did not protest the claimant's receipt of benefits but did receive the notice of claim. Employer did not protest because it believed claimant would be eligible for benefits.

On January 15, 2022, a notice of reimbursable benefit charges was mailed to the employer's address of record. The statement included a charge for benefits paid to the claimant for the fourth quarter of 2021. The employer filed its appeal of that statement of charges on January 20, 2022 (Department Exhibit 1).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not timely file its appeal 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(8)B(4) provides:

8. Financing benefits paid to employees of nonprofit organizations.

b. Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

(4) The amount due specified in a bill from the department is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the department setting forth the grounds for the application. The department shall promptly review the amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

Iowa Code section 96.7(2)a(6), which applies to contributory employers, provides guidance in the situation here, which deals with a reimbursable employer. It 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.

In this case, the administrative law judge concludes the employer did receive the notice of claim, but did not timely protest the claim. The issue then, is whether the employer's protest should be accepted as timely.

Iowa Admin. Code r. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(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 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.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

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

Date of submission and extension of time for payments and notices.

24.35(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 division 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.

In this case, the employer was previously notified of the claim when the notice of claim was mailed to it on November 24, 2021. Employer did not file a protest to the claim and first tried to protest charges through a subsequent January 15, 2022 notice of reimbursable benefit charges. The delay was not due to any *Agency error or misinformation or delay or other action of the United States Postal Service* pursuant to Iowa Admin. Code r. 871-4.35(2). Employer has a reasonable amount of time to file a protest. The administrative law judge further concludes that the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's termination of 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).

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. In this case, the employer was previously notified of the claim when the notice of claim was mailed to it on November 24, 2021.

In summary, employer received prior notice of claim and had a reasonable opportunity to respond to it, but failed to do so in a timely manner. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to claimant's eligibility for benefits or authority to remand the case for a fact-finding interview. Iowa Code § 96.6(2). The charges will remain in effect and claimant is allowed benefits.

DECISION:

The January 15, 2022, notice of reimbursable benefit charges for the fourth quarter of 2021 is affirmed. The employer did not timely file an appeal from the first notification it had that the claimant was still receiving benefits following a change in employment status.



Jennifer L. Beckman
Administrative Law Judge
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May 23, 2022
Decision Dated and Mailed

jlb/scn