

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

AARON B KELNE
Claimant

APPEAL NO. 20A-UI-04738-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**CAMPAIGN HEADQUARTERS
CAPITOL RESOURCES INC**
Employer

OC: 09/29/19
Claimant: Respondent (2)

Iowa Code Section 96.7(2)(a)(6) – Appeal from Statement of Charges
Iowa Code Section 96.6-2 - Timeliness of Protest
Iowa Code Section 96.5(1) - Requalification

STATEMENT OF THE CASE:

The employer filed an appeal from the quarterly statement of charges that was mailed to the employer on May 8, 2020. After due notice was issued, a hearing was held by telephone conference call on June 17, 2020. Claimant Aaron Kelne participated. Nicole Schlinger represented the employer and presented additional testimony through Nicole Reynolds. Exhibit 1 and 2 and Department Exhibits D-1 and D-2 were received into evidence. The administrative law judge took official notice of the claimant's wages for the period subsequent to his separation from this employer and prior to the September 29, 2019 original claim date. At the employer's request, the administrative law judge took official notice of the employer's SIDES account activity, or lack of the same, for the period of April 2019 through December 2019. The administrative law judge hereby also takes official notice of the Declaration of Power of Attorney or Authorized Representative filed on May 4, 2018.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.
Whether the employer's appeal from the statement of charges was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Nicole Schlinger is President of Capitol Resources, Inc., doing business as Campaign HQ. On May 4, 2018, Ms. Schlinger filed a Declaration of Power of Attorney or Authorized Representative wherein she designated Baron Payroll, Inc. as the employer's representative for "Only Tax Related Matters." The filing specifically did not authorize Baron Payroll, Inc. to handle "Benefit/Claim Related Matters." The filing authorized Baron Payroll, Inc. to manage some aspects of the employer's MyIowaUI.org account, but specifically excluded "Benefit/Claim Information." On April 15, 2019, Josh Catone of Baron Payroll established a SIDES account for Capitol Resources, Inc. via the employer's MyIowaUI.org account. The enrollment in SIDES may have been inadvertent, as it requires only the clicking of a box and entry of an email address on the

employer's MylowaUI.org account. SIDES stands for State Information Data Exchange System. Employers may establish a SIDES account to receive electronic notice of claims and to file electronic responses to claims. Enrollment in SIDES would prompt Iowa Workforce Development to discontinue mailing notice of claims and would instead result in Iowa Workforce Development providing electronic notice of claims through a posting to the employer's SIDES account and an accompanying email notice sent to the email address designated by the employer or the employer's agent. Capitol Resources did not authorize Baron Payroll to establish the SIDES account for the employer. Capitol Resources was unaware of the existence of the SIDES account until a December 2019 appeal hearing concerning another claimant and a timeliness of protest issue pertaining to that other claimant. Capitol Resources thereafter accessed the SIDES account, obtained a PIN for the account, and designated the email address of Christie Jack as the email address to which notice of SIDES postings should be sent. The employer has since designated Ms. Schlinger's email address as the address to which notice of SIDES postings should be sent.

On October 7, 2019, the SIDES system created an electronic notice of claim concerning claimant Aaron B. Kelne and posted the notice of claim to the employer's SIDES account. At 1:00 a.m. on October 8, 2019, the SIDES system automatically emailed notice to the email address of record to give notice of the SIDES posting and the October 18, 2019 protest deadline. Capitol Resources was unaware of the notice of claim and unaware of the underlying claim for benefits until it received the quarterly statement of charges that Iowa Workforce Development mailed to the employer on May 8, 2020. No one filed a protest on behalf of Capitol Resource in response to the notice of claim. The May 8, 2020 statement of charges included a \$145.82 charge for benefits paid to Mr. Kelne during the first quarter of 2020. Iowa Workforce Development had in fact paid \$2,660.00 in benefits to Mr. Kelne during the first quarter of 2020. The quarterly statement of charges also included a charge for a second claimant. Capitol Resources received the quarterly statement of charges in a timely manner. On May 20, 2020, Capitol resources emailed an appeal of the statement of charges to the Appeals Bureau. The Appeals Bureau received the appeal on May 20, 2020.

Subsequent to his March 2018 separation from this employer, and prior to establishing the original claim for benefits that was effective September 29, 2019, Mr. Kelne had additional employment through which he earned and was paid wages equal to or greater than 10 times his weekly unemployment insurance benefit amount.

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.

The evidence in the record establishes that the employer, Capitol Resources, did not receive notice of the claim for benefits until it received the statement of charges that was mailed on May 8, 2020. The employer had not authorized Baron Payroll to establish a SIDES account. The employer had given notice to Iowa Workforce Development through the Declaration of Attorney or Authorized Representative that Baron Payroll was not authorized to handle benefit/claim matters. Under these circumstances, the employer cannot be penalized for the carelessness of Baron Payroll pertaining to establishment and/or mismanagement of the SIDES account. On May 20, 2020, the employer filed a timely appeal from the quarterly statement of charges. The timely appeal from the statement of charges constitutes a timely protest of the claim for benefits. The claimant requalified for benefits subsequent to his separation from this employer and prior to establishing his claim for benefits by working in and being paid wages for insured work equal to 10 times his weekly benefit amount. See Iowa Code section 96.5(1)(g). In light of the timely appeal from the statement of charges and the claimant's requalification for benefits, the claimant remains eligible for benefits, provided he meets all other eligibility requirements, and the employer's account shall not be charged.

DECISION:

The employer's appeal from the statement of charges mailed on May 8, 2020 was timely. The appeal from the statement of charges constitutes a timely protest of the claim for benefits. The claimant requalified for benefits subsequent to his separation from this employer. The claimant is eligible for benefits, provided he is otherwise eligible. This employer's account shall not be charged.



James E. Timberland
Administrative Law Judge

June 30, 2020
Decision Dated and Mailed

jet/scn