

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**JESSICA RUIZ HEMMEN**  
Claimant

**APPEAL 20A-UI-00786-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**BLACK HAWK COUNTY**  
Employer

**OC: 07/07/19**  
**Claimant: Respondent (1)**

Iowa Code § 96.7(8)B(4) – Notice of Reimbursable Benefit Charges  
Iowa Code § 96.6(2) – Timeliness of Employer Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal from the notice of reimbursable benefit charges dated January 15, 2020, which listed reimbursable benefit charge information for the fourth quarter of 2019. Due notice was issued and a hearing was held on February 12, 2020. The hearing was consolidated with Appeal No. 20A-UI-00905-DB-T. Claimant participated personally. Employer participated through witness Amanda Fessenmeyer. The administrative law judge took official notice of the administrative records, including the employer's statement of protest and the previous notice of reimbursable benefit charges dated October 15, 2019.

**ISSUES:**

Did the employer file a timely protest?

Did the employer file a timely appeal to the notice of reimbursable benefit charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for unemployment insurance benefits with an effective date of July 7, 2019. Iowa Workforce Development ("IWD") emailed the employer a Notice of Claim on July 8, 2019. The employer filed an untimely Statement of Protest on July 23, 2019, which was after the due date of July 19, 2019. The employer did not file an appeal to the notice of reimbursable benefit charges that was mailed to it on October 15, 2019, which listed benefit payments for the claimant's account.

The employer filed an appeal to the January 15, 2020 notice of reimburseable benefit charges on January 24, 2020. The employer is protesting the claim on the basis that the employer sold the business to a third party and claimant became employed with that company.

**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. Iowa Dep't of Job Serv.*, 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 sent.

An exception exists to filing a response within ten days if there is credible evidence that the delay was due to agency error, misinformation or delay, or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). However, if the employer has failed to file a timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make any determination with respect to the nature of the claimant's separation from employment. See *Beardslee*, 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(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) 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), 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. However, 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 emailed to it and it failed to file a timely protest. It was also notified of the allowance of benefits when it was charged on the notice of reimbursable benefit charges that was mailed to it on October 15, 2019. No good cause reason for the late filing of the protest was established pursuant to Iowa Admin. Code r. 871-24.35(2). As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met. The statement of charges dated January 15, 2020 is affirmed.

**DECISION:**

The employer failed to file a timely protest. The conditions for appealing the statement of charges have not been met. The January 15, 2020 statement of charges for the fourth quarter of 2019 is affirmed.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

db/rvs