

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LORI S EGLESTON

Claimant

TEMP ASSOCIATES-IOWA INC

Employer

APPEAL 20A-UI-10729-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 01/26/20

Claimant: Respondent (1-R)

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 September 3, 2020, Temp Associates-Iowa, Inc. (employer) filed an appeal from the statement of charges mailed May 8, 2020, reference 03, which showed the employer's account subject to charge. After due notice was issued, a hearing was held by telephone conference call on October 20, 2020. The claimant responded to the hearing notice with a written document stating she was not available for the hearing, but she did not request a postponement. The claimant's statement was admitted as Exhibit A. The employer participated through Judy Boyles, Manager. The Employer's Exhibit 1 was admitted into the record. The administrative law judge took official notice of the administrative record, including the claimant's claim and wage histories.

ISSUES:

Was the employer's protest timely?

Was the employer's appeal from the statement of charges timely?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: The claimant's assignment ended January 30, 2020, and she made herself available for more work. The claimant filed her claim for unemployment insurance benefits effective January 26. The notice of claim was mailed to the employer's last known address of record on February 3. The employer received the notice of claim and submitted the protest on February 10, within the ten days allotted.

The claimant permanently separated from employment on March 16. On March 24, the employer reported the separation to Iowa Workforce Development (agency). The claimant contends she left to accept other employment. (Exhibit A) The issue of whether the claimant's separation qualifies her for benefits has not been investigated or adjudicated by the Benefits Bureau.

Even though the claimant obtained other employment, the claim history shows that she continued to file for unemployment insurance benefits, and did not report any wages earned from April 1 through June 30. The claimant's wage history shows Sac & Fox Trip reported \$4,118 in wages earned during the second quarter of 2020. Whether the claimant failed to report wages earned has not been investigated or adjudicated by the Integrity Bureau.

On May 8, the agency mailed the statement of charges for the first quarter of 2020. The employer noticed the account listed the claimant's charges. On May 13, the employer filed an appeal with the Appeals Bureau via email. (Exhibit 1) The Appeals Bureau acknowledged receipt of the appeal. However, no appeal was entered and no hearing was scheduled.

The employer subsequently received the statement of charges for the second quarter of 2020. It did not appeal that statement of charges as the agency relieved all employers of any second quarter charges. However, the employer sent another inquiry to the Appeals Bureau over concerns related to any third quarter statement of charges. The agency then set up this appeal hearing.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes that employer filed a timely protest to the claimant's claim for benefits and filed a timely appeal to the first quarter statement of charges.

Iowa Code § 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:

Employer contribution and reimbursements.

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 r. 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.

The employer notified the agency when the claimant's employment ended and filed an appeal to the statement of charges when it first learned the claimant's benefits were being charged to its account. Any delay was the result of agency error.

As the protest and appeal were timely filed, the issue of whether the claimant's separation qualifies her for benefits is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision to include both parties.

Whether the claimant failed to report wages earned as delineated in the findings of fact is remanded to the Integrity Bureau for investigation.

DECISION:

The May 8, 2020, reference 03, statement of charges is affirmed, pending the outcome of the remanded issues. The employer filed a timely protest and appeal. If the claimant received benefits to which she was not entitled, the employer will see a credit on a future statement of charges.

REMANDS:

Whether the claimant's separation qualifies her for benefits is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision to include both parties.

Whether the claimant failed to report wages earned as delineated in the findings of fact is remanded to the Integrity Bureau for investigation.



Stephanie R. Callahan
Administrative Law Judge

October 28, 2020
Decision Dated and Mailed

src/scn