

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

DIANE K TEGTMEYER

Claimant

APPEAL 22A-UI-17411-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SCENIC HEALTH CARE LLC

Employer

OC: 12/12/21

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 August 16, 2022, Scenic Health Care, LLC (employer) filed an appeal from the statement of charges dated August 9, 2022, reference 02, for the third quarter of 2022. A hearing was held on October 26, 2022, pursuant to due notice. Diane K. Tegtmeyer (claimant) did not respond to the hearing notice and did not participate. The employer participated through Charlotte Lemke, HR Manager, and David Schlotzhuer, CFO, and it was represented by Richelle Narting, General Counsel. The Employer's Exhibits 1 and 2 and the Department's Exhibit D1 was admitted into the record. The administrative law judge took official notice of 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 all of the evidence in the record, the administrative law judge finds: In July 2021, the employer purchased the business of VSL Iowa Falls, LLC (VSL) and kept the employees working at the facility. However, neither the employer nor VSL provided notice to Iowa Workforce Development (IWD) that ownership had changed.

After the sale, the claimant continued to work for the employer at the same hours and rate of pay but was reassigned to a different facility. She filed a claim for benefits effective December 12, 2021, after the transfer to the new facility. A notice of claim was sent to VSL, her employer of record with IWD, in the SIDES system. VSL responded to the notice of claim one day late.

At the beginning of January 2022, IWD became aware of the sale of the business. On January 10, IWD issued a decision finding the employer acquired all of VSL's business and would receive its experience rate. As a result, the employer also acquired all of the debts that might be owed by VSL to IWD. The employer has not appealed that decision.

The employer received the statement of charges dated May 9, for the first quarter of 2022, which showed charges to its account for the claimant. The employer appealed that decision, and a hearing was held. The administrative law judge (ALJ) in that case affirmed the statement of charges stating there had not been a timely protest to the claim. (Exhibit 1) The ALJ's decision was affirmed by the Employment Appeal Board.

On August 9, IWD issued a statement of charges for the third quarter of 2022 to the employer, which showed more benefits paid to the claimant. On or about August 16, the employer appealed the statement of charges because the claimant had continued to work for them during the time that she was receiving benefits. The employer did not report any potential fraud to IWD through its website.

The administrative record shows that during the first quarter of 2022, the employer reported paying the claimant \$7,089.00 in gross wages, and during the second quarter, \$7,485.00 in gross wages. While filing for benefits from January 2 through April 2, the claimant reported earning \$1,926.00 in gross wages and, from April 3 through June 18, the claimant reported earning \$1,788.00 in gross wages. As a result, from January 2 through June 18, the claimant filed for benefits each week and received \$12,033.00 in unemployment insurance benefits. Whether the claimant failed to properly report wages and is subject to a penalty for misrepresentation has not been investigated or adjudicated by the Investigations and Recovery unit of the Integrity Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the following reasons, the administrative law judge concludes the employer had notice of the claim prior to the third quarter statement of charges and it does not have appeal rights to that document.

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(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. [Emphasis added.]

Iowa Admin. Code r. 871-26.4 provides, in relevant part:

2. An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp after the decision was mailed to the party at its last-known address and shall state the following:

- a. The name, address and social security number of the claimant;
- b. A reference to the decision from which appeal is taken; and,
- c. The grounds upon which the appeal is based.

3. 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.

4. Also notwithstanding the provisions of subrule 26.4(2), a reimbursable 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 15 days of the mailing date of the quarterly billing of benefit charges.

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 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 mailed.

The prior ALJ decision concluded VSL, the claimant's employer of record at the time, filed its first protest after the deadline and the employer did not establish that the delay was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). Iowa Code section 96.7(2)a(6) states that a contributory 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 following receipt of a statement of charges. In other words, when an employer receives a notice of claim and fails to protest in a timely manner, they do not have appeal rights to the statement of

charges. In this case, the employer received prior notice of claim and no longer has appeal rights to the statement of charges. The administrative law judge lacks jurisdiction to modify the charges to the employer's account.

While the ALJ lacks jurisdiction to change or alter the statement of charges at this time, an allegation of fraud can be raised at any time, regardless of when the protest to the claim was filed. Therefore, whether the claimant failed to properly report wages as delineated in the findings of fact and is subject to a penalty for misrepresentation is remanded to the Investigations and Recovery unit of the Integrity Bureau for investigation.

DECISION:

The August 9, 2022, reference 02, statement of charges for the third quarter of 2022 is affirmed at this time. The employer did not timely protest the claimant's claim for benefits and the charges to the account are correct based on current information at the time of the hearing.

REMAND:

Whether the claimant failed to properly report wages as delineated in the findings of fact and is subject to a penalty for misrepresentation is remanded to the Investigations and Recovery unit of the Integrity Bureau for investigation.



Stephanie R. Callahan
Administrative Law Judge

November 29, 2022
Decision Dated and Mailed

src/scn

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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.