

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MICHAEL P STRUNK
Claimant

APPEAL 24A-UI-01949-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

CLINTON ENGINEERING CO INC
Employer

**OC: 12/10/23
Claimant: Respondent (4R)**

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:

Clinton Engineering Co Inc, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) February 9, 2024 Statement of Charges for the Fourth Quarter of 2023 that listed charges of \$1,164.00 to the employer's account for UI benefits IWD paid to Mr. Strunk. On February 23, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Strunk for a telephone hearing scheduled for March 13, 2024.

The undersigned administrative law judge held a telephone hearing on March 13, 2024. The employer participated in the hearing through Caroline Dach, payroll assistant. Mr. Strunk participated in the hearing personally. Administrative Law Judge Duane Golden observed the hearing. The administrative law judge took official notice of the administrative record and Department's Exhibits 1-2 as evidence.

ISSUES:

Did the employer protest Mr. Strunk's UI claim on time?
Did the employer appeal from the Statement of Charges on time?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the undersigned finds: Mr. Strunk applied for UI benefits effective December 10, 2023. IWD sent the employer a Notice of Mr. Strunk's UI claim via the State Identification Date Exchange System (SIDES) on December 16, 2023. The Notice contains a warning that the employer's protest response is due ten days from the initial Notice date and gave a due date of Tuesday, December 26, 2023. The employer received the Notice and responded to IWD via SIDES on December 18, 2023.

IWD mailed the employer the February 9, 2024 Statement of Charges. The employer received the Statement. The employer appealed the Statement via fax on February 19, 2024.

¹ Appellant is the person or employer who filed the appeal.

On March 7, 2024, IWD mailed the employer and Mr. Strunk a reference 03 UI decision. The decision found Mr. Strunk eligible for REGULAR (state) UI benefits because IWD concluded he earned 10 times his weekly UI benefits in insured wages after his employment ended with this employer. The decision also concluded that IWD would not charge the employer's account for any UI benefits IWD paid to Mr. Strunk, and IWD would charge \$16,064.00 in wage credits Mr. Strunk earned between July 1, 2022 and July 28, 2023 to the unemployment compensation fund. The appeal deadline in this decision is Sunday, March 17, 2024. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline is extended to Monday, March 18, 2024. The employer received the decision in the mail on March 13, 2024.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes: The employer appealed the February 9, 2024 Statement of Charges on time, Mr. Strunk requalified for UI benefits so he is eligible for UI benefits, and the employer's account should not be charged.

Iowa Code section 96.6(2) provides, in relevant 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 issuance of the notice of the filing of the claim 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.

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.

Iowa Code section 96.7(2)a(6) provides that an employer who did not receive a Notice of Claim may file an appeal to determine the claimant's eligibility to receive UI benefits. But if the employer received Notice of the Claim and did not protest the claim, the employer cannot appeal the claimant's eligibility to receive UI benefits based on the employer receiving the Statement of Charges.

In this case, the employer received the Notice of Claim for Mr. Strunk's UI claim and protested the claim before the deadline. The employer protested Mr. Strunk's UI claim on time. The employer also received the February 9, 2024 Statement of Charges from IWD and appealed the Statement on February 19, 2024. The employer appealed the Statement within 30 days of February 9. So, the employer appealed the Statement on time.

Mr. Strunk requalified for UI benefits after his job ended with this employer. So, Mr. Strunk is eligible for UI benefits and the employer's account should not be charged. IWD should issue a credit to the employer's account.

DECISION:

The February 9, 2024 Statement of Charges for the Fourth Quarter of 2023 is MODIFIED IN FAVOR OF THE APPELLANT, THE EMPLOYER. The employer appealed the Notice of Claim and the February 9, 2024 Statement of Charges on time. Mr. Strunk has requalified for UI benefits since his job ended with this employer. Mr. Strunk is eligible for UI benefits, as long as no other decision denies him UI benefits.

REMAND:

This matter is REMANDED (sent back) to the IWD Tax Bureau to issue a credit to the employer's account for the \$1,164.00 in REGULAR (state) UI benefits IWD paid to Mr. Strunk, and/or any other necessary action.



Daniel Zeno
Administrative Law Judge

March 14, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with this 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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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.