

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

---

**STEVEN MYERS**  
Claimant

**APPEAL NO. 22A-UI-09869-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**THE PEAK AGENCY INC**  
Employer

**OC: 03/29/20**  
**Claimant: Respondent (1R)**

---

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

**STATEMENT OF THE CASE:**

On March 19, 2022, the employer filed a late appeal from the quarterly statement of charges that Iowa Workforce Development mailed to the employer on November 9, 2020. After due notice was issued, a hearing was held by telephone conference call on May 6, 2022. The employer representative, Steven Myers, is also the claimant in this matter. Mr. Myers participated in the appeal hearing. Exhibit 1, the appeal letter, attachment, and postmarked envelope, and Department Exhibits D-1 through D-7 were received into evidence.

**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:

Steven Myers owns and operates The Peak Agency, Inc. Mr. Myers is the business's sole employee. Mr. Myers (claimant) established an original claim for benefits that was effective March 29, 2020. Iowa Workforce Development set the weekly benefit amount at \$591.00. IWD paid \$591.00 in regular benefits for each of the five weeks between March 29, 2020 and May 2, 2020 and for the nine weeks between June 28, 2020 and August 29, 2020. In total, IWD paid \$8,274.00 to Mr. Myers (claimant).

The relevant base period consists of the fourth quarter of 2018 and the first, second and third quarters of 2020. Mr. Myers paid himself \$18,000.00 in wages during each of the base period. The Peak Agency, Inc. reported the quarterly wages to Iowa Workforce Development. One-third of the base period wages equals \$24,000.00. However, due to IWD's formula for calculating benefits Mr. Myers' maximum benefit amount was set at \$15,366.00.

On April 6, 2020, Iowa Workforce Development sent a notice of claim The Peak Agency, Inc., but erroneously directed the notice to an old address the employer has not used since 2016.

The employer had provided an updated address and IWD had used the updated address for other correspondence. The employer did not receive the notice of claim mailed on April 6, 2020.

On August 7, 2020, Iowa Workforce Development mailed a quarterly statement of charges to the employer that included a \$2,955.00 charge for benefits paid to Mr. Myers during the calendar quarter that ended June 30, 2020. IWD directed the statement of charges to the employer's updated street address, but omitted the suite number. The employer had previously provided IWD with the suite number. The employer did not receive the quarterly statement of charges mailed on August 7, 2020.

On November 9, 2020, Iowa Workforce Development mailed a quarterly statement of charges to the employer that included a \$5,319.00 charge for benefits paid to Mr. Myers during the calendar quarter that ended September 30, 2020. IWD directed the statement of charges to the employer's updated street address, but again omitted the suite number. The employer did not receive the statement of charges and did not file an appeal by the December 9, 2020 deadline.

In February 2021, Mr. Myers (claimant) contacted Iowa Workforce Development regarding 1099 tax forms IWD had issued.

In 2022, Iowa Workforce Development notified the employer of a tax rate increase. The notice prompted additional contact and led to Iowa Workforce Development providing the employer with a copy of the November 9, 2020 quarterly statement of charges. On March 19, 2022, the employer filed an appeal from the statement of charges within 30 days of receipt of the statement of charges. The mailed appeal is postmarked March 19, 2022.

The employer concedes that the charge amounts are accurate, but challenges the assessments in light of the COVID-19 basis for the claim for benefits and assurances the employer received from IWD, prior to filing the claim, that the claim for benefits would not negatively impact the employer's unemployment insurance tax rate.

#### **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.

There is good cause to treat the protest and appeal filed March 19, 2022 as a timely protest and timely appeal. The employer did not receive a notice of claim or statement of charges until February 2022 and filed the protest/appeal within 30 days of receipt of the November 9, 2020 statement of charges. The late filing of the protest and appeal are attributable to Iowa Workforce Development error. The charge amounts are affirmed, pending remand to the Tax Bureau for determination of whether the charges may be waived or whether the matter should proceed to a fact-finding interview.

**DECISION:**

The employer's protest of the claim and appeal from the statements of charges was timely. The charge amounts are AFFIRMED, pending remand to the Tax Bureau for determination of whether the charges may be waived or whether the matter should proceed to a fact-finding interview.

**REMAND:**

This matter is REMANDED to the Tax Bureau for determination of whether the charges may be waived or whether the matter should proceed to a fact-finding interview.



---

James E. Timberland  
Administrative Law Judge

June 15, 2022  
Decision Dated and Mailed

jet/mh