

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

AMY MCANINCH
Claimant

APPEAL NO. 19A-UI-09374-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAYGOGA LLC
Employer

OC: 07/28/19
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest
Iowa Code Section 96.7(2)(a)(6) – Appeal from Statement of Charges
Iowa Code Section 96.7(2)(b)(1) – Successor Liability for Benefits

STATEMENT OF THE CASE:

The employer filed a timely appeal from the Statement of Charges that Iowa Workforce Development mailed to the employer on November 8, 2019. After due notice was issued, a hearing was held by telephone conference call on December 19, 2019. Claimant Amy McAninch participated. Jessica Alfrey, Sales Manager, represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: (1) the August 2, 2019 notice of claim/protest form that Iowa Workforce Development received from employer Airport Hotel Management Services, L.L.C. on August 8, 2019, (2) the Full-Non Mandatory Successorship notice that Iowa Workforce Development mailed to Jaygoga, L.L.C. on August 21, 2019, and (3) the Statement of Charges that Iowa Workforce Development mailed to Jaygoga, L.L.C. on November 8, 2019.

ISSUES:

Whether the employer submitted a timely protest in response to the notice of claim.
Whether the employer's appeal from the quarterly statement of charges that was mailed to the employer on November 8, 2019 may be considered.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Jaygoga, L.L.C. (employer account number 620954) owns and operates the Ramada hotel located near the Des Moines International Airport. Jaygoga is a successor employer to predecessor employer Airport Hotel Management Services, L.L.C. (employer account number 582797), which previously owned and operated the Ramada hotel located near the Des Moines International Airport.

On August 2, 2019, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the last known address of the predecessor employer, Airport Hotel Management Services, L.L.C. The claimant was employed by Airport Hotel Management Services, but did not perform work for Jaygoga. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice,

which was August 12, 2019. The notice of claim set forth the claimant's weekly benefit amount, \$481.00, and the employer's maximum liability on the claim, \$12,506.00. On August 8, 2019, Iowa Workforce Development received Airport Hotel Management Services' timely response to the notice of claim. Airport Hotel Management Services indicated on the notice of claim/protest form that the employer was not protesting the claim for benefits.

On August 21, 2019, Iowa Workforce Development mailed a Full Non-Mandatory Successorship notice to Jaygoga at its last-known address of record. Jaygoga received the notice in a timely manner. The notice stated as follows:

Decision: You are liable for unemployment insurance contributions (tax) effective July 1, 2019.

Explanation: You acquired all the business of AIRPORT HOTEL MANAGEMENT SERVICES, LLC, UI account # 00582797 effective 07/01/2019. All experience will transfer to your account. You are liable for any debt this employer may owe to Iowa Workforce Development.

Your rates are shown in the table. These rates are based on the experience of the former owner of the business. Future rates will be based on the combined experience. Experience includes taxable wages and benefit charges.

The Full Non-Mandatory Successorship notice further stated:

This decision will be final if you do not file an appeal within thirty days from the date on this notice. Your appeal must be in writing and mailed directly to the Unemployment Insurance Services Tax Bureau.

The Full Non-Mandatory Successorship notice set forth the applicable Iowa Code sections governing successorship. Jaygoga did not appeal the full successorship determination.

On November 8, 2019, Iowa Workforce Development mailed a State of Charges to Jaygoga that included charges for benefits Iowa Workforce Development had paid to the claimant during the calendar quarter that ended September 30, 2019.

On November 26, 2019, Jaygoga electronically filed an appeal from the statement of charges. Jaygoga stated the sole basis of its appeal as follows: "This person was never employed by us."

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.

Prior to the August 21, 2019 successorship determination, Iowa Workforce Development appropriately mailed a notice of claim to the predecessor employer, Airport Hotel Management Services, L.L.C. (employer account number 582797). The notice of claim set forth the claimant's weekly benefit amount and the employer's maximum liability on the claimant's claim for benefits. The predecessor employer provided a timely response that it was not protesting

the claim for benefits. Based on that timely response and waiver of protest, Iowa Workforce Development appropriately determined that the claimant was eligible for benefits provided she met all other eligibility requirements and that the employer's account could be charged for benefits up to the maximum set forth on the notice of claim.

Iowa Code section 96.7(2)(b)(1) provides:

Employer contributions and reimbursements.

2. *Contribution rates based on benefit experience.*

b. (1) If an organization, trade, or business, or a clearly segregable and identifiable part of an organization, trade, or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 16, paragraph "b", continues to operate the organization, trade, or business, the successor employer shall assume the position of the predecessor employer or employers with respect to the predecessors' payrolls, contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the organization, trade, or business. However, the successor employer shall not assume the position of the predecessor employer or employers with respect to the predecessor employer's or employers' payrolls, contributions, accounts, and contribution rates which are attributable to that part of the organization, trade, or business transferred, unless the successor employer applies to the department within ninety days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the department.

Iowa Administrative Code Rule 871-23.31(3) provides:

Future benefit charges based on wages paid by the predecessor prior to the acquisition or purchase date. The successor employer will receive future benefit charges based on the wage credits transferred to said successor's account for the six-quarter period immediately preceding the acquisition date plus any benefit charges based on wages attributable to the acquired portion prior to the six-quarter period on claims already filed on the date of the acquisition.

In the absence of a timely appeal from the August 21, 2019, Full Non-Mandatory Successorship determination and notice, the employer account of the successor employer, Jaygoga, L.L.C. (employer account number 620954), became liable for charges for benefits paid to this claimant, based on the wage credits that were transferred to Jaygoga's account as part of the transfer of the predecessor's "experience."

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.] The predecessor employer, Airport Hotel Management Services, L.L.C., received appropriate notice of the allowance of benefits pursuant to Iowa Code Section 96.6(2) and acquiesced in that determination. Based on the successorship determination, the successor employer is bound by the determination that the claimant is eligible for benefits, provided she is otherwise eligible, and that the employer's account may be charged for benefits up to the maximum liability referenced on the notice of claim. Based on the prior notice, Jaygoga's appeal from the quarterly Statement of Charges may not be further considered.

DECISION:

The quarterly statement of charges is affirmed. The predecessor employer received timely notice of the claim and waived protest. The employer account of successor employer, Jaygoga, L.L.C. is liable for benefits paid to the claimant. The employer account of Jaygoga, L.L.C. may be charged pursuant to the charges set forth on the notice of claim that was mailed on November 8, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn