

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DONITA R SHOVEIN
Claimant

APPEAL 18A-UI-11278-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MASON CITY COMMUNITY SCHOOL DIST
Employer

OC: 06/17/18
Claimant: Respondent (1R)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(8)B(4) – Application for Redetermination

STATEMENT OF THE CASE:

Mason City Community School District (employer) filed an appeal from the Notice of Reimbursable Benefit Charges dated November 9, 2018, for the third quarter of 2018. A hearing was held on December 6, 2018, pursuant to due notice. Donita R. Shovein (claimant) participated personally. The employer participated through Human Resources Director Tom Drzycimski. The Employer's Exhibit 1 and the Department's Exhibits D1 through D3 were admitted into the record without objection.

ISSUES:

Is the employer's protest timely?
Did the employer timely appeal the notice of reimbursable charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant began working for the employer as a full-time para-professional in 1991. She retired in June 2017 and accepted a position with the employer as a substitute para-professional. The claimant will only substitute for two employees and has not worked in the 2018-2019 school year although she is still on the employer's substitute list.

The claimant filed her claim for benefits effective June 17, 2018 when her non-education part-time employer closed its business. The claimant's base period includes full-time, part-time and on-call or substitute wages. She is not currently looking for full-time work.

The employer was enrolled in SIDES in 2014 by an employee who separated in September 2017. She registered herself as the notification recipient and did not tell anyone the employer was enrolled in the program. The employment contract of that employee was not renewed following a breakdown in the employment relationship. The employer deactivated her email account shortly after her separation.

The notice of claim was emailed to the email address of record on June 18, 2018; however, agency records do not reflect the email address to which it was sent as the email address was updated at some point before the appeal was filed. The employer did not receive that notice as the email address to which it was likely sent had been deactivated. The first notice of the claimant's claim for benefits was the receipt of the notice of reimbursable benefit charges mailed November 9, 2018 for the third quarter of 2018. The employer filed its appeal of that notice on November 19, 2018.

The claimant's eligibility for benefits based on her ability to and availability for work as a part-time or substitute employee and whether she had reasonable assurance of employment between academic terms have not yet been investigated or adjudicated by the Benefits Bureau of Iowa Workforce Development (IWD).

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely appeal from the notice of reimbursable benefit charges.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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 provides, in relevant part:

Employer contributions and reimbursements.

7. Financing benefits paid to employees of governmental entities.

...

c. For purposes of this subsection, "governmental reimbursable employer" means an employer which makes payments to the department for the unemployment compensation fund in an amount equivalent to the regular and extended benefits paid, which are based on wages paid for services in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the department shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph "b", subparagraphs (2) through (5).

...

8. Financing benefits paid to employees of nonprofit organizations.

...

b. Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

...

(4) The amount due specified in a bill from the department is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the department setting forth the grounds for the application. The department shall promptly review the amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

(5) The provisions for collection of contributions under section 96.14 are applicable to reimbursements for benefits paid in lieu of contributions.

Iowa Code section 96.7(2)a(6), which applies to contributory employers, provides guidance in the situation here, which deals with a reimbursable employer. It states that an 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.

Assuming the notice was sent to the former employee's email address, although the actual email address where the notice was sent cannot be verified in agency records, it was sent to an inactive email address and the employer did not receive it. The employer filed its appeal of the notice of reimbursable benefit charges within the time period prescribed by the Iowa Employment Security Law because it did not receive the notice of claim indicating the claimant had filed a claim for benefits. The employer's appeal of that notice within fifteen days is timely.

Because the appeal is timely and the employer never previously received notice of the claim, the issues of whether the claimant is eligible for benefits based on her ability to and availability for work as a part-time or substitute employee and whether she had reasonable assurance of employment between academic terms are remanded to the Benefits Bureau of IWD for an initial investigation and determination.

DECISION:

The November 9, 2018, notice of reimbursable benefit charges for the third quarter of 2018 is affirmed pending the outcome of the remanded issues. The employer has filed a timely appeal from that notice, as the notice of claim was not received.

REMAND:

The issues of whether the claimant is eligible for benefits based on her ability to and availability for work as a part-time or substitute employee and whether she had reasonable assurance of employment between academic terms are remanded to the Benefits Bureau of IWD for an initial investigation and determination.

Stephanie R. Callahan
Administrative Law Judge

Decision Dated and Mailed

src/scn