

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

CHLOE M FREDERICKSEN
Claimant

APPEAL 21A-UI-04362-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BRICK STREET MARKET LLC
Employer

OC: 05/17/20
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 March 3, 2021, Brick Street Market, LLC (employer) filed an appeal from the statement of charges dated February 9, 2021, for the fourth quarter of 2020. A hearing was held on April 8, 2021, pursuant to due notice. Chloe M. Frederickson (claimant) participated personally. The employer participated through Marsha Nekvinda, Office Manager. The department's Exhibits D1 through D5 were admitted into the record.

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: The claimant filed a claim for benefits effective May 17, 2020. The notice of claim was mailed to the employer's address of record on May 19. The employer received the notice and protested on May 28, because the claimant still worked for the employer at the same or more hours and wages.

On August 15, the claimant left employment to go to college. She continued to claim for unemployment insurance benefits. The employer did not receive the second or third quarter statement of charges, which showed it was being charged for the claimant's benefits. The first notice the employer had that it was being charged for benefits following its protest was the statement of charges mailed February 9, 2021, for the fourth quarter of 2020. The employer filed its appeal of that statement of charges on March 3.

The issues of whether the claimant was partially unemployed effective May 17, 2020, whether the separation on August 15 qualifies her for benefits, and whether the claimant is able to and available for work after the separation have not yet been investigated or adjudicated by the Benefits Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer filed a timely protest.

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(2)a(6) provides:

Employer contribution and reimbursements.

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.

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 employer filed the protest in a timely manner, but it was not received by the agency. Immediately upon receipt of information to that effect, the February 9, 2021, statement of charges for the fourth quarter of 2020, a second protest, in the form of an appeal, was filed within 30 days. Therefore, the employer's protest and appeal to the statement of charges shall be accepted as timely.

The issues of whether the claimant was partially unemployed effective May 17, 2020, whether the separation on August 15 qualifies her for benefits, and whether the claimant is able to and available for work after the separation are remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decisions to include both parties.

DECISION:

The February 9, 2021, statement of charges for the fourth quarter of 2020 is affirmed, pending the outcome of the remanded issue. The employer has filed a timely protest to the claimant's receipt of benefits.

REMAND:

The issues of whether the claimant was partially unemployed effective May 17, 2020, whether the separation on August 15 qualifies her for benefits, and whether the claimant is able to and available for work after the separation are remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decisions to include both parties.



Stephanie R. Callahan
Administrative Law Judge

April 12, 2021
Decision Dated and Mailed

src/lj