

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

JASON PRICE
Claimant

APPEAL NO. 24A-UI-02085-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

MOEHL MILLWORK INC
Employer

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

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 February 20, 2024, the employer filed an appeal from the Statement of Charges that Iowa Workforce Development mailed to the employer on February 9, 2024. The Statement of Charges included an \$1,100.78 charge to the employer’s account for benefits IWD disbursed during the calendar quarter that ended December 31, 2023. After due notice was issued, a hearing was held on March 13, 2024. Jason Price (claimant) participated. Laura Miller, Human Resources Manager, represented the employer. Will Hipwell was available to testify on behalf of the employer but did not testify. Employer Exhibits 1 and 2 and Department Exhibits D1 through D3 were received into evidence.

ISSUES:

Whether the employer’s protest of the claim for benefits was timely.
Whether the employer filed a timely appeal from the Statement of Charges.
Whether the Statement of Charges is correct.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Iowa Workforce Development fraud investigation personnel have concluded that Jason Price (claimant) did not establish the December 10, 2023 original claim for benefits filed under his name and Social Security number and that the claim is fraudulent. IWD has voided the claim for benefits.

On December 14, 2023, Iowa Workforce Development mailed a Notice of Claim concerning the above claimant to the employer’s address of record. The Notice of Claim indicated a weekly benefit amount set at \$582.00 and a maximum employer charge amount of \$9,312.00. The Notice of Claim contained a warning that any protest of the claim must be postmarked, faxed or returned by the due date set forth on the Notice of Claim, which was December 26, 2023. The

Notice of Claim was received at the employer's address of record in a timely manner, prior to the deadline for protest.

On December 21, 2023, the employer added protest information to the Notice of Claim form and signed to certify the accuracy of the information provided. The employer indicated the claimant was still employed full-time. The employer mailed the protest to Iowa Workforce Development. Upon receipt of the protest, IWD documented that the protest was postmarked December 22, 2023.

On January 16, 2024, IWD Benefits Bureau held a fact-finding interview that addressed the issues set forth in the employer's protest.

On January 17, 2024, IWD Benefits Bureau issued a reference 01 decision that denied benefits effective December 10, 2023, based on the deputy's conclusion the claimant was still employed under the same hours and wages as in the original contract of hire and could not be deemed partially unemployed within the meaning of the law. In the absence of an appeal, the reference 01 decision became a final agency decision. The reference 01 decision was silent on whether the employer's account could be charged for benefits.

On February 9, 2024, Iowa Workforce Development mailed a Statement of Charges to the employer's address of record. The Statement of Charges included a \$1,100.78 charge to the employer's account for benefits disbursed during the calendar quarter that ended December 31, 2023. IWD had indeed disbursed the benefits in question but the claimant did not request or receive the benefits.

On February 20, 2024, the employer emailed an appeal from the Statement of Charges to the Appeals Bureau and attached a copy of the February 9, 2024 Statement of Charges. The Appeals Bureau received the appeal on February 20, 2024.

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 87124.8(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 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.]

Iowa Admin. Code rule 87126.4(3) provides:

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.

[Emphasis added.]

The employer filed a timely protest on December 22, 2023 and a timely appeal of the February 9, 2024 Statement of Charges on February 20, 2024. The Statement of Charges was not the employer's first notice of the claim. Though the February 9, 2024 Statement of Charges included a \$1,100.78 charge to the employer's account for benefits disbursed during the calendar quarter that ended December 31, 2023, other actions taken by IWD indicate that IWD will issue a credit to the employer's account for the full amount of benefits disbursed in connection with the fraudulent claim. This matter will be remanded to IWD Tax Bureau for appropriate further action consistent with this decision, the voiding of the claim, the reference 01 disqualification decision, and the determination that the claim was fraudulently established by someone other than the claimant.

DECISION:

This matter is MODIFIED in favor of the employer/appellant to acknowledge the timely protest, the timely appeal from the Statement of Charges, the reference 01 disqualification decision, and the IWD determination that the claim was fraudulently established by someone other than the claimant. This matter will be remanded to IWD Tax Bureau for appropriate further action consistent with this decision, the voiding of the claim, the reference 01 disqualification decision, and the determination that the claim was fraudulently established by someone other than the claimant.

REMAND:

This matter is REMANDED to IWD Tax Bureau for appropriate further action consistent with this decision, the voiding of the claim, the reference 01 disqualification decision, and the determination that the claim was fraudulently established by someone other than the claimant.



James E. Timberland
Administrative Law Judge

March 15, 2024
Decision Dated and Mailed

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APPEAL RIGHTS. If you disagree with the 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 Ave 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>.

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 Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.