

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

ELIZABETH JOHNSON
Claimant

RIGGANGOOD LLC
Employer

APPEAL NO. 23A-UI-11288-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/14/23
Claimant: Respondent (1)**

Iowa Code § 96.7-2-a(6) – Statement of Charges
Iowa Code § 96.6-2 – Timeliness of Protest

STATEMENT OF THE CASE:

Employer filed an appeal from a decision of a statement of charges dated August 9, 2023, reference 00, which assessed charges for the second quarter of 2023. After due notice, a telephone conference hearing was scheduled for and held on December 21, 2023. Claimant participated personally. Employer participated by Seth Riggan. Claimant failed to respond to the hearing notice and did not participate. Employer's Exhibit 1 was admitted into evidence.

ISSUES:

Whether the statement of charges is correct.

Whether the statement of charges is timely appealed.

Whether the employer's protest is timely.

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: A statement of charges was mailed to the employer on August 9, 2023. The employer appealed the statement of charges on the basis that claimant never worked for employer.

Initially employer stated that they did timely receive a Notice of Claim in this matter on or about May 22, 2023. Employer stated that they mailed back in their protest to the Notice of Claim in a timely manner and further stated that the protest indicated claimant never worked for them. Iowa Workforce Development shows no record that they ever received a copy of the protest from employer.

Employer stated that they did receive a copy of the 2nd quarter Statement of Charges sent to them on August 9, 2023. After receipt of the document, employer tried to reach out through an email to IWD on August 20, 2023. They did not file an appeal in accordance with instructions

included on the Statement of Charges document. Employer received no response from IWD, and sent another email on September 1, 2023 to uiclaimshelp.

This email was responded by uiclaimshelp on September 14, 2023. The email informed claimant to follow instructions listed on the back page of the Statement of Charges to dispute the charges. The same email also guided to contact the tax department for issues surrounding the proper party to be billed for claimant's unemployment benefits received. Employer did not appeal the Statement of Charges at or around this time.

Employer then received another Statement of Charges on November 9, 2023 that detailed employer's charges for the third quarter of the year. It included more charges to employer's account based on claimant's unemployment receipts. Employer filed a timely appeal to this Statement of Charges on November 30, 2023.

REASONING AND CONCLUSIONS OF LAW:

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

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

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 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.

Iowa Code section 96.7(2)a(6), which applies to contributory employers, provides guidance in the situation here. It states that a contributory 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 following receipt of a statement of charges. Said appeal must be filed within 30 days of the receipt of the Statement of Charges.

In this matter, employer did receive a Notice of Claim, but IWD has no record of a filing of a protest to that notice. Employer stated he did file the protest, but could provide no proof of mailing, nor of receipt by IWD.

Employer then could have had another opportunity to file a protest to the Notice of Claim, as long as he appealed the first Statement of Charges within 30 days. Although claimant did

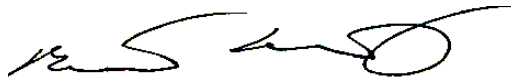
contact IWD within that time period, he did not follow instructions and file an appeal at all after receiving the August 9, 2023 Statement of Charges. Even after the September 14, 2023 response from uiclaimshelp, employer did not file an appeal of the Statement of Charges.

As the first appeal of any Statement of Charges only occurred after receipt of the second Statement of Charges on November 9, 2023, this appeal is not within 30 days of the receipt of the Statement of Charges on August 9, 2023. Absent a showing by employer proving his sending of a protest and absent the employer responding to the September 14 statement from uiclaims that employer should follow directions to send in an appeal, the administrative law judge cannot simply overlook both actions on the part of employer with no documentary evidence supporting employer's claims.

It is held that the statement of charges is correct because employer did not timely appeal the statement of charges and did not timely file a protest in this matter.

DECISION:

The statement of charges dated August 9, 2023, reference 00, is affirmed. The statement of charges is correct.



Blair Bennett | Administrative Law Judge II
Iowa Department of Inspections & Appeals

December 28, 2023
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:

**Iowa Employment Appeal Board
6200 Park Avenue 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
En línea: 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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.