

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

KEENAN A MCFARLIN
Claimant

APPEAL NO. 20A-UI-04827-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**RON GODWIN INC
WINIFREDS**
Employer

**OC: 02/16/20
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

STATEMENT OF THE CASE:

The employer filed an appeal from the quarterly statement of charges that was mailed to the employer on May 8, 2020 and that contained a \$1,204.00 charge to the employer's account for benefits paid to the claimant during the first quarter of 2020. After due notice was issued, a hearing was held by telephone conference call on June 22, 2020. Claimant Keenan McFarlin participated. Marshall Godwin represented the employer. Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the Agency's administrative record of benefits paid to the claimant (WAGE-A). The administrative law judge left the hearing record open through June 24 2020 for the limited purpose of allowing the employer additional time and opportunity to submitting documentation confirming transmission of a protest on or about February 27, 2020. On June 23, 2020, the employer submitted email notice that the employer had been unable to locate records documenting transmission of the notice of claim to Iowa Workforce Development.

ISSUE:

Whether the employer's protest of the claim for benefits was timely.
Whether the employer's appeal from the statement of charges was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On February 19, 2020, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. 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 March 2, 2020. The notice of claim set forth the employer's maximum liability in connection with the claim as \$6,052.30. The employer received the notice of claim in a timely manner. On February 27, 2020, Marshall Godwin, Vice President, placed the employer's protest information on the notice of claim form. On February 27, 2020, Mr. Godwin took steps to fax the notice of claim form back to Iowa Workforce Development. Mr. Godwin directed to the protest to 515-

725-2938, the second of three telephone numbers Iowa Workforce designated on the back side of the notice of claims as numbers to which employer's should fax protests. Mr. Godwin remained near the fax machine and the machine indicated it was "sending." Mr. Godwin then moved on to other matters, rather than waiting to confirm that protest had been successfully transmitted. The employer's machine was not set up to generate a fax transmission record.

After Mr. Godwin stepped away from the fax machine on February 27, 2020, he did not give the matter additional thought until he received the quarterly statement of charges that Iowa Workforce Development mailed to the employer on May 8, 2020. Mr. Godwin is familiar with the protest, fact-finding interview, and claims adjudicating process. Mr. Godwin understood that he would ordinarily receive notice of a fact-finding interview soon after the protest was submitted and that he would receive a decision following the fact-finding interview. Mr. Godwin did not receive notice of a fact-finding interview and did not receive a decision. Iowa Workforce Development records reflect that the Agency did not received a protest from the employer on February 27 2020 or at any time prior to May 26, 2020.

On May 8, 2020, Iowa Workforce Development mailed a quarterly statement of charges to the employer that contained a \$1,204.00 charge to the employer's account for benefits paid to the claimant during the first quarter of 2020 in connection with the claimant's February 16, 2020 original claim. Iowa Workforce Development had indeed disbursed \$1,204.00 in benefits to claimant Keenan McFarlin for four weeks between February 27, 2020 and March 24, 2020 and the relevant payment transactions were initiated and completed during the first quarter of 2020.

On May 26, 2020, the employer faxed an appeal from the quarterly statement of charges. The employer attached a copy of the notice of claim form. The Appeals Bureau received the appeal on May 26, 2020.

Subsequent to the December 2019 separation from this employer, and prior to establishing the original claim for benefits that was effective February 16, 2020, the claimant worked in additional employment and was paid wages that exceeded 10 times his \$301.00 weekly benefit amount.

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 that 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 871-24.8(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 Administrative Code Rule 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.

- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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.

The weight of the evidence establishes an untimely protest. The employer received the notice of claimant in a timely manner and had a reasonable opportunity to file a protest by the March 2, 2020 protest deadline. The weight of the evidence indicates that the protest was not successfully transmitted on February 27, 2020 and was not received by Iowa Workforce Development until the employer faxed a copy on May 26, 2020 with its appeal from the quarterly statement of charges. Because the evidence fails to establish a timely protest, the administrative law judge lacks jurisdiction to disturb the Agency's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, and the employer's liability for benefits. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall remain in effect.

Because the quarterly statement of charges was not the employer's first notice of Mr. McFarlin's claim for benefits, the administrative law judge need and cannot further consider the appeal from the quarterly statement of charges.

DECISION:

The employer's protest was untimely. The claimant is eligible for benefits, provided he is otherwise eligible. The employer's account may be charged for benefits.

A rectangular box containing a handwritten signature in cursive script that reads "James E. Timberland".

James E. Timberland
Administrative Law Judge

July 8, 2020
Decision Dated and Mailed

jet/mh