

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

MARIO E AVITIA
Claimant

CITY OF DES MOINES PAYROLL DEPT B
Employer

APPEAL 22A-UI-10917-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 02/21/21
Claimant: Respondent (1R)**

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(8)B(4) – Notice of Reimbursable Charges

STATEMENT OF THE CASE:

The employer/appellant filed an appeal from the April 15, 2022 Notice of Reimbursable Benefit Charges that listed charges for this claimant in the amount of \$1,219.15. Due notice was issued and a telephone hearing was held on June 16, 2022. The claimant did not participate. The employer participated through witness Allison Lambert. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

Was the employer's protest to the notice of claim timely?
Was the employer's appeal from the notice of reimbursable benefit charges timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an original claim for unemployment insurance benefits with an effective date of February 21, 2021. The administrative records establish that a notice of claim was mailed to the employer on February 23, 2021. The employer never received the Notice of Claim in the mail. The employer filed an appeal to the Notice of Reimbursable Benefit Charges on April 29, 2022 as that was its first notification that it was being charged benefits for this claimant. The employer intended to contest the claim based upon the claimant's separation from employment.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant.

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.

Iowa Code section 96.7(8)b(4) provides:

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, within thirty days after the mailing of the notification, the nonprofit organization appeals 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. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(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 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.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

Iowa Admin. Code r. 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), 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.

In this case, the failure to file a timely protest to the notice of claim was due to postal service delay because the employer never received the notice of claim in the mail. Iowa Admin. Code r.

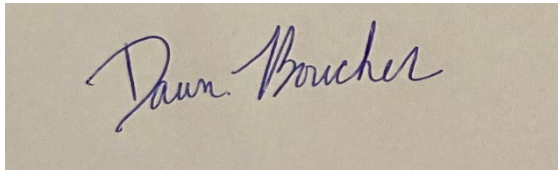
871-24.35(2). The administrative law judge concludes that the employer's appeal of the notice of reimbursable benefit charges was within the time period prescribed by the Iowa Employment Security Law because it filed its appeal prior to the expiration of the appeal deadline to do so and the statement of reimbursable charges was the first notification the employer received that it was being charged benefits paid to the claimant. The employer's appeal of the notice of reimbursable benefit charges is timely.

DECISION:

The employer filed a timely appeal to the notice of reimbursable benefit charges. The April 15, 2022 Notice of Reimbursable Benefits Charges is affirmed pending the remanded separation from employment issue.

REMAND:

The issue of claimant's separation from employment with this employer is remanded to the Benefits Bureau for an initial investigation and determination, with notice and opportunity to be heard provided to both parties.

A rectangular area containing a handwritten signature in blue ink that reads "Dawn Boucher".

Dawn Boucher
Administrative Law Judge

June 22, 2022
Decision Dated and Mailed

db/db