

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

THOMAS L DRILLING
Claimant

APPEAL 19A-UI-00853-H2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**UNITED COMMUNITY SCHOOL
DISTRICT**
Employer

**OC: 06/17/18
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(8)B(4) – Application for redetermination

STATEMENT OF THE CASE:

The employer filed an appeal from the notice of reimbursable benefit charges dated January 15, 2019 for the fourth quarter of 2018. The parties were properly notified about the hearing. A telephone hearing was held on February 14, 2019. Claimant did not participate. Employer participated through Jacob Ballard, Business Manager. Official notice was taken of agency records

ISSUES:

Did the employer file a timely protest?
Did the employer timely appeal the notice of reimbursable benefit charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant originally filed a claim for benefits with an effective date of June 18, 2017. A notice of claim was sent to the employer in June 2017 and a fact-finding interview was held. A fact-finding decision was issued in August 2017 that denied benefits for the claimant. The claimant appealed that decision and a hearing was held before an administrative law judge on September 20, 2017. After the hearing a decision on claimant's separation from employment with this employer was issued in appeal number 17A-UI-08981-DGT. The claimant was awarded benefits. The employer did not appeal the decision to the Employment Appeal Board. The employer has paid at least two prior reimbursable statements of charges for benefits paid to this claimant.

Mr. Ballard is a new business manager and was not employed by the school district in 2017 when the claimant was separated and the agency decisions were issued. The previous business manager and superintendent did not appeal any of the prior reimbursable statement of charges, or the decision allowing benefits.

The employer wishes to protest the claim and the fourth quarter reimbursable charges.

REASONING AND CONCLUSIONS OF LAW:

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, 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.

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. Iowa Code section 96.7(2)a(6).

In this case, the employer had notice of the claim based the original notice of claim sent in June 2017, the fact finding decision issued in August 2017, the administrative law judge decision issued in September 2017 and the two prior reimbursable statement of charges sent to them for separate quarters in 2018. The employer did not appeal any of the prior decisions or statements of charges. The employer paid both of the prior statement of charges.

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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of that court in that decision 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.

By analogy to appeals from initial determinations, the ten day period for filing a protest is jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the protesting party was constitutionally invalid. *Beardslee*

v. Iowa Dep't of Job Serv., 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the protester was deprived of a reasonable opportunity to assert the protest in a timely manner. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973).

The administrative law judge concludes that the employer did receive the original notice of claim, the fact-finder's decision, the administrative law judge's decision and the two prior statements of charges, but did not appeal any of them. The employer was not deprived of a reasonable opportunity to assert the protest in a timely fashion. Therefore, the administrative law judge concludes that the employer appeal to the fourth quarter statement of reimbursable charges is untimely. The charges will remain in effect and claimant is allowed benefits.

DECISION:

The January 15, 2019, notice of reimbursable benefit charges is affirmed. The employer did not file a timely appeal to the notice of charges. The charges shall remain in full force and effect. Benefits are allowed.

Teresa K. Hillary
Administrative Law Judge

Decision Dated and Mailed

tkh/rvs