

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

DANYALE D BOARDMAN
Claimant

KELLNER NELSON LAW FIRM PC
Employer

APPEAL 21A-UI-11776-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/14/21
Claimant: Respondent (1R)**

Iowa Code § 96.6(2) – Timeliness of Protest

Iowa Code § 96.7(2)a(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

On May 12, 2021, Kellner Nelson Law Firm, PC (employer) filed an appeal from the statement of charges dated May 7, 2021, reference 01, for the first quarter of 2021. A hearing was held on July 26, 2021, pursuant to due notice. Danyale D. Boardman (claimant) participated personally, and SHE was represented by Marlon Mormann, Attorney at Law. The employer participated through Elizabeth Kellner-Nelson, Attorney/Owner. The department's Exhibits D1 through D3 were admitted into the record. The administrative law judge took official notice of the administrative record, specifically the claimant's claim and wage histories.

ISSUES:

Was the employer's protest timely?

Was the employer's appeal from the statement of charges timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The notice of claim was mailed to the employer's address of record on March 16, 2021. The employer did not receive that notice. The first notice of the claimant's claim for benefits was the receipt of the statement of charges mailed May 7, for the first quarter of 2021. The employer filed its appeal of that statement of charges on May 12.

The claimant was employed part-time for 12 hours a week. She was initially laid off from employment in March 2020, due to the pandemic, and she filed an initial claim for benefits effective March 15. The employer attempted to recall her back to work in May and June of that year; however, the claimant declined. The claim was coded as a COVID-19 claim and the employer was not charged for any benefits paid during that claim year; therefore, it was unaware the claimant continued to file claims once work was available. Whether the claimant

was able to and available for work or refused a suitable offer of work in May 2020, has not been investigated or adjudicated by the Benefits Bureau.

The claimant returned to work and began reporting wages earned on her unemployment claim effective June 28. The claimant had twelve hours of work available to her each week but only worked eight hours a week. She earned \$13.00 an hour, or \$104.00 a week in gross wages. The claimant reported a gross \$48.00 in wages earned each week from June 28 through October 3. She reported \$96.00 a week in gross wages earned from October 4 through March 6, 2021, and \$84.00 during the week ending March 13. The claimant filed a second claim for benefits effective March 14, 2021. She continued to work eight hours a week and report \$96.00 in wages through the week ending June 12. The claimant separated from employment on June 16.

Whether the claimant was partially unemployed effective June 28, 2020, has not been investigated or adjudicated by the Benefits Bureau. Whether the claimant has underreported her wages earned effective June 28, 2020, and is subject to a penalty for misrepresentation, has not been investigated or adjudicated by the Integrity Bureau.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did file a timely appeal to the statement of charges.

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

Filing – determination – appeal.

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.

Iowa Code section 96.7(2)a(6) provides:

Employer contribution and reimbursements.

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 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.

The employer filed its appeal of the statement of charges within the time period prescribed by the Iowa Employment Security Law because it did not receive the notice of claim indicating the claimant had filed a claim for benefits. The employer's appeal of that statement within thirty days is timely.

The issues of whether the claimant was able to and available for work effective May 2020, whether she refused a suitable offer of work, and whether she was partially unemployed effective June 28, 2020, are remanded to the Benefits Bureau for fact-finding interviews and unemployment insurance decisions to include both parties.

Whether the claimant underreported her wages earned effective June 28, 2020, while filing for unemployment insurance benefits as delineated in the findings of fact, and is subject to a penalty for misrepresentation, is remanded to the Integrity Bureau for investigation.

DECISION:

The May 7, 2021, reference 01, statement of charges for the first quarter of 2021 is affirmed, pending the outcome of the remanded issue. The employer has filed a timely appeal from that statement of charges, as the notice of claim was not received.

REMANDS:

The issues of whether the claimant was able to and available for work effective May 2020, whether she refused a suitable offer of work, and whether she was partially unemployed effective June 28, 2020, are remanded to the Benefits Bureau for fact-finding interviews and decisions to include both parties.

Whether the claimant underreported her wages earned effective June 28, 2020, while filing for unemployment insurance benefits as delineated in the findings of fact, and is subject to a penalty for misrepresentation, is remanded to the Integrity Bureau for investigation.



Stephanie R. Callahan
Administrative Law Judge

July 30, 2021
Decision Dated and Mailed

src/mh