

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**CIEARRA SMITH**  
Claimant

**RAINBO OIL COMPANY**  
Employer

**APPEAL 21A-UI-06806-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 05/24/20**  
**Claimant: Respondent (1-R)**

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 February 11, 2021, Rainbo Oil Company (employer) filed an appeal from the statement of charges dated February 9, 2021, reference 01, for the fourth quarter of 2020. A hearing was held on May 17, 2021, pursuant to due notice. Ciearra Smith (claimant) participated. The employer participated through Joyce Hanley, Human Resources Representative. The Department's Exhibits D1 through D5 were admitted into the record.

**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 claimant filed a claim for benefits effective May 24, 2020. The notice of claim was mailed to the employer's address of record on June 1. The employer protested the notice of claim on June 3 and reported the claimant was still employed part-time. The claimant reported wages earned during most weeks she filed for benefits through the week ending August 29.

On August 7, the agency mailed a statement of charges to the employer, which showed charges to its account for the second quarter of 2020. The employer contacted the agency on August 12 and August 26 disputing the charges to its account. The agency did not respond. On November 9, the agency mailed the third quarter statement of charges. The employer did not receive that statement.

The claimant reactivated her claim for benefits effective December 13, and has not reported any wages earned while filing her weekly claims for benefits. On February 9, 2021, the agency mailed the fourth quarter statement of charges. The employer filed its appeal of that statement of charges on February 11.

The issue of whether the claimant is partially unemployed effective May 24, 2020, and able to and available for work has not yet been investigated or adjudicated by the Benefits Bureau.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes the employer did file a timely protest.

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. 871-24.35(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 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 protest to the notice of claim within ten days. Any delay in processing that protest was the result of agency error. The employer has taken appropriate steps to respond each time it received notice the agency had not yet processed the protest. The employer's appeal of the most recent statement of charges within thirty days is timely; therefore, the protest shall be accepted as timely.

The issue of whether the claimant is partially unemployed effective May 24, 2020, and able to and available for work is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision to include both parties.

#### **DECISION:**

The February 9, 2021, reference 01, statement of charges for the fourth quarter of 2020 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.

**REMAND:**

The issue of whether the claimant is partially unemployed effective May 24, 2020, and able to and available for work is remanded to the Benefits Bureau for a fact-finding interview and unemployment insurance decision to include both parties.



---

Stephanie R. Callahan  
Administrative Law Judge

May 24, 2021  
Decision Dated and Mailed

src/scn