

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

JOHN W WHITE

Claimant

APPEAL NO. 22A-UI-09813-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

BREMER COUNTY AUDITOR

Employer

OC: 11/29/20

Claimant: Respondent (2R)

Iowa Code Section 96.6-2 - Timeliness of Protest

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

Iowa Code Section 96.7(7)(c) – Government Reimbursable Employer

Iowa Code Section 96.7(8)(b)(4) – Reimbursements for Benefits, Redetermination

Iowa Admin. Code rule 871-26.4(4) – Appeal from Notice of Reimbursable Benefit Charges

STATEMENT OF THE CASE:

On April 30, 2021, the employer filed an appeal from the Notice of Reimbursable Benefit Charges that Iowa Workforce Mailed to the employer on April 15, 2021, which Notice included a charge to the employer's account for benefits paid to the claimant. After due notice was issued, a hearing was held by telephone on May 24, 2022. John White (claimant) did not respond to the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Attorney Ann Smisek represented the employer and presented testimony through Barb Meeker and Shelly Wolf. Employer Exhibits A through H were received into evidence. The administrative law judge took official notice of the following Agency administrative records: D-1 (Notice of claim), D-2 & D-3 (DBIN), D-4 (WAGE-A), and the name and job title of IWD staff member Debra Smith, Employer Liability Specialist.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.

Whether the employer's appeal from the Notice of Reimbursable Benefit Charges was timely.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On December 7, 2020, Iowa Workforce Development mailed a defective notice of claim to the employer. The notice of claim included the Social Security number for the claimant in interest, John White, but erroneously named the claimant's spouse, Carolyn White, as the claimant in interest. The notice of claim provided a December 17, 2020 deadline for the employer's response. The employer received the notice of claim on December 9, 2020. On that same day, the employer faxed a protest to Iowa Workforce Development via one of the designated protest fax numbers. The employer correctly asserted that the named claimant, Carolyn White, had never worked for the employer. IWD never sent a notice of claim to the employer with the corrected claimant name.

On April 15, 2021, IWD mailed a Notice of Reimbursable Benefit Charges to the employer's address of record. The Notice included a \$904.00 charge to the employer's account for benefits paid to the claimant, John White. The Notice of Reimbursable Benefits Charges was the employer's first notice that the county's employee, John White, had filed a claim for benefits. The Notice included a 15-day deadline for appeal, measured from the mailing date of the Notice.

On April 30, 2021, the employer's legal counsel, Ann Smisek, emailed the employer's appeal to the Appeals Bureau at the designated email address. The Appeals Bureau responded that same day, confirming receipt of the appeal. However, the Appeals Bureau did not acknowledge an appeal or schedule an appeal hearing until April 2022.

Since April 30, 2021, the employer has attempted to have its protest of the claim and appeal from the statement of charges heard by Iowa Workforce Development.

IWD records reflect that IWD paid \$11,126.33 in regular state benefits to the claimant in connection with the November 29, 2020 original claim. Of that amount, \$904.00 was charged to this reimbursable employer. The \$904.00 amount assessed to the employer's account represents one-third of the base period wages this employer reported to IWD as wages paid to the claimant.

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 which 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 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(7)(c) provides as follows:

7. Financing benefits paid to employees of governmental entities

c. For the purposes of this subsection, "governmental reimbursable employer" means an employer which makes payments to the department for the unemployment compensation fund in an amount equal to the regular and extended benefits paid, which are based on wages paid for service in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base

period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the department shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph "b", subparagraphs (2) through (5).

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 Administrative Code rule 871-26.4(4) provides as follows:

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 from the mailing date of the quarterly billing of benefit charges.

The employer's protest and appeal from the Notice of Reimbursable Benefit Charges were timely. IWD never sent the employer a notice of claim that included the claimant's name. Despite the defective notice, the employer filed a timely protest in response to the notice of claim regarding Carolyn White. The employer's first notice of the claim concerning claimant John White was the Notice of Reimbursable Charges that IWD mailed to the employer on April 15, 2021. On April 30, 2021, within 15 days of the mailing of the Notice of Reimbursable Benefit Charges, the employer filed an appeal from the Notice of Reimbursable Benefit Charges. The employer has taken timely steps to preserve its right to challenge liability on the claim. This matter will be remanded to the Benefits Bureau for a fact-finding interview concerning the claimant's eligible for benefits and the employer's liability for benefits. The remand should address whether the claimant was able to work, available for work, temporarily and/or partially unemployed from this employer, and whether the employer's account may be charged for benefits for the period beginning November 29, 2020.

DECISION:

The April 15, 2021 Notice of Reimbursable Benefit Charges is REVERSED, based on the employer's timely protest and appeal, and based on the Notice of Reimbursable Benefit Charges being prematurely entered. This matter will be remanded to the Benefits Bureau for a fact-finding interview concerning the claimant's eligible for benefits and the employer's liability

for benefits. The remand should address whether the claimant was able to work, available for work, temporarily and/or partially unemployed from this employer, and whether the employer's account may be charged for benefits for the period beginning November 29, 2020.

REMAND:

This matter is REMANDED to the Benefits Bureau for a fact-finding interview concerning the claimant's eligible for benefits and the employer's liability for benefits. The remand should address whether the claimant was able to work, available for work, temporarily and/or partially unemployed from this employer, and whether the employer's account may be charged for benefits for the period beginning November 29, 2020.



James E. Timberland
Administrative Law Judge

July 6, 2022
Decision Dated and Mailed

jet/scn

APPEAL RIGHTS. If you disagree with the decision, you or any interested party may:

1. Appeal to the Employment Appeal Board within fifteen (15) days of the date under the judge's signature by submitting a written appeal via mail, fax, or online to:

Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
Online: eab.iowa.gov

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

AN APPEAL TO THE BOARD SHALL STATE CLEARLY:

- 1) The name, address, and social security number of the claimant.
- 2) A reference to the decision from which the appeal is taken.
- 3) That an appeal from such decision is being made and such appeal is signed.
- 4) The grounds upon which such appeal is based.

An Employment Appeal Board decision is final agency action. If a party disagrees with the Employment Appeal Board decision, they may then file a petition for judicial review in district court.

2. If no one files an appeal of the judge's decision with the Employment Appeal Board within fifteen (15) days, the decision becomes final agency action, and you have the option to file a petition for judicial review in District Court within thirty (30) days after the decision becomes final. Additional information on how to file a petition can be found at Iowa Code §17A.19, which is online at <https://www.legis.iowa.gov/docs/code/17A.19.pdf> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Note to Parties: YOU MAY REPRESENT yourself in the appeal or obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds.

Note to Claimant: It is important that you file your weekly claim as directed, while this appeal is pending, to protect your continuing right to benefits.

SERVICE INFORMATION:

A true and correct copy of this decision was mailed to each of the parties listed.

DERECHOS DE APELACIÓN. Si no está de acuerdo con la decisión, usted o cualquier parte interesada puede:

1. Apelar a la Junta de Apelaciones de Empleo dentro de los quince (15) días de la fecha bajo la firma del juez presentando una apelación por escrito por correo, fax o en línea a:

**Employment Appeal Board
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: eab.iowa.gov**

El período de apelación se extenderá hasta el siguiente día hábil si el último día para apelar cae en fin de semana o día feriado legal.

UNA APELACIÓN A LA JUNTA DEBE ESTABLECER CLARAMENTE:

- 1) El nombre, dirección y número de seguro social del reclamante.
- 2) Una referencia a la decisión de la que se toma la apelación.
- 3) Que se interponga recurso de apelación contra tal decisión y se firme dicho recurso.
- 4) Los fundamentos en que se funda dicho recurso.

Una decisión de la Junta de Apelaciones de Empleo es una acción final de la agencia. Si una de las partes no está de acuerdo con la decisión de la Junta de Apelación de Empleo, puede presentar una petición de revisión judicial en el tribunal de distrito.

2. Si nadie presenta una apelación de la decisión del juez ante la Junta de Apelaciones Laborales dentro de los quince (15) días, la decisión se convierte en acción final de la agencia y usted tiene la opción de presentar una petición de revisión judicial en el Tribunal de Distrito dentro de los treinta (30) días después de que la decisión adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

Nota para las partes: USTED PUEDE REPRESENTARSE en la apelación u obtener un abogado u otra parte interesada para que lo haga, siempre que no haya gastos para Workforce Development. Si desea ser representado por un abogado, puede obtener los servicios de un abogado privado o uno cuyos servicios se paguen con fondos públicos.

Nota para el reclamante: es importante que presente su reclamo semanal según las instrucciones, mientras esta apelación está pendiente, para proteger su derecho continuo a los beneficios.

SERVICIO DE INFORMACIÓN:

Se envió por correo una copia fiel y correcta de esta decisión a cada una de las partes enumeradas.