

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

SHELLY R BOX
Claimant

LAMONI HOTEL GROUP LLC
Employer

APPEAL NO. 23A-UI-10753-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/23/23
Claimant: Appellant (1)**

Iowa Code Section 96.6(2) – Timeliness of Protest
Iowa Code Section 96.7(2)(a)(6) – Appeal from Statement of Charges

STATEMENT OF THE CASE:

On November 16, 2023, the employer filed an appeal from the statement of charges that Iowa Workforce Development mailed to the employer on November 9, 2023 and which included a \$908.41 charge to the employer's account for benefits paid to the claimant during the quarter that ended September 30, 2023. After due notice was issued, a hearing was held on December 5, 2023. The claimant did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Mariah Smith represented the employer. There were three appeal numbers set for a consolidated hearing: 23A-UI-10751-JT-T, 23A-UI-10752-JT-T, and 23A-UI-10753-JT-T. Exhibits 1 and Department Exhibits 1 through 5 were received into evidence.

ISSUES:

Whether the employer's protest was timely.
If the employer's first notice of the claimant was the November 9, 2023 statement of charges, whether the employer filed a timely appeal from the statement of charges.
Whether the statement of charges is correct.

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds:

Shelly Box (claimant) established an original claim for benefits that was effective April 23, 2023. The claimant's base period employers include Lamoni Hotel Group, L.L.C., doing business as Cobblestone Inn. The employer's address of record is the employer's corporate office located in Neenah, Wisconsin. The employer also uses a third-party management company, Diamond Hospitality, which is located in Erie, Pennsylvania.

On May 5, 2023, Iowa Workforce Development mailed a notice of claim concerning the claimant to the employer's Neenah, Wisconsin address of record. The notice of claim included the claimant's weekly benefit amount (\$351.00) and the employer's maximum liability (\$5,156.12). The notice of claim included a May 15, 2023 deadline for the employer's protest or response to

the notice of claim. The notice of claim included instructions for mailing or faxing the protest to IWD. The United States Postal Service delivered the notice of claim to the employer's Wisconsin address of record in a timely manner, prior to the protest deadline. On May 15, 2023, the employer forwarded the notice of claim form to Mariah Smith, General Manager of the Cobblestone Inn in Lamoni. On May 15, 2023, Ms. Smith completed protest information on the notice of claim form and certified the accuracy of the information. Ms. Smith indicated the employer had ended the claimant's employment on October 17, 2022. Ms. Smith emailed the completed notice of claim form to the employer's corporate office. On May 16, 2023, Diamond Hospitality mailed the completed notice of claim form to Iowa Workforce Development from Pennsylvania. The envelope in which the protest/response was mailed bears a May 16, 2023 Pittsburgh, Pennsylvania postmark. Iowa Workforce Development received the mailed protest on May 23, 2023 and marked it late.

On May 26, 2023, Iowa Workforce Development mailed the May 26, 2023 (reference 02) decision to the employer's Wisconsin address of record. The reference 02 decision stated the claimant was eligible for benefits, provided she was otherwise eligible, and held the employer's account could be charged for benefits, based on IWD's determination that the employer's protest regarding the October 17, 2022 separation was untimely and therefore could not be considered. The reference 02 decision stated that the decision would be final unless an appeal was postmarked or received by the Appeals Section by June 5, 2023. The decision included clear and concise instructions for filing an appeal. The United States Postal Service delivered the decision to the employer's Wisconsin address of record in a timely manner, prior to the appeal deadline. The employer did not file an appeal by the June 5, 2023 deadline or at any time prior to November 16, 2023.

Iowa Workforce Development paid \$3,345.00 in benefits to the claimant for 10 of the 11 weeks between May 14, 2023 and July 29, 2023. This included \$2,023.00 in benefits paid during the second quarter of 2023, which ended June 30, 2023, and \$1,322.00 in benefits paid during the third quarter of 2023.

On August 9, 2023, IWD mailed a statement of charges to the employer's Wisconsin address of record. The statement included a \$145.86 charge to the employer's account for benefits paid to the claimant during the quarter that ended June 30, 2023. The employer received the statement of charges in a timely manner but did not respond to the statement of charges.

On November 9, 2023, IWD mailed a statement of charges to the employer's Wisconsin address of record. The statement included a \$908.41 charge to the employer's account for benefits paid to the claimant during the quarter that ended September 30, 2023. On November 14, 2023, the employer forwarded the statement of charges to Mariah Smith, the General Manager for the Lamoni Cobblestone Inn.

On November 16, 2023, Ms. Smith completed and transmitted an online appeal. The Appeals Bureau received the appeal on November 16, 2023. In response to the appeal, the Appeals Bureau docketed an appeal from the May 26, 2023 (reference 02) decision, an appeal from the August 9, 2023 statement of charges, and an appeal from the November 9, 2023 statement of charges.

The May 26, 2023 (reference 02) decision was affirmed in Appeal Number 23A-UI-10751-JT-T.

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 Administrative Code Rule 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) 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 Admin. Code rule 871-26.4(3) provides:

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.

The employer received the notice of claim, but filed an untimely protest. See Appeal Number 23A-UI-10751-JT. Because the November 9, 2023 was not the employer's first notice of the claim for benefits, appeal rights set forth at Iowa Code section 96.7)(2)(a)(6) do not apply to the statement of charges mailed on November 9, 2023 regarding benefits paid to the claimant during the quarter that ended September 30, 2023. The statement of charges remains in effect.

DECISION:

The employer filed an untimely protest. See Appeal Number 23A-UI-10751-JT. Because the November 9, 2023 was not the employer's first notice of the claim for benefits, appeal rights set forth at Iowa Code section 96.7)(2)(a)(6) do not apply to the statement of charges mailed on November 9, 2023 regarding benefits paid to the claimant during the quarter that ended September 30, 2023. The statement of charges is AFFIRMED and remains in effect.



James E. Timberland
Administrative Law Judge

December 6, 2023
Decision Dated and Mailed

JET/jkb

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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
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>.

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
6200 Park Ave Suite 100
Des Moines, Iowa 50321
Fax: (515)281-7191
Online: 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 adquiriera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.