

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**KEOMANIXAY PHOTHIWAT**  
Claimant

**APPEAL 22A-UI-10061-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**AMERICAN SPIRIT CORPORATION**  
Employer

**OC: 08/15/21  
Claimant: Respondent (1R)**

Iowa Code § 96.6(2) – Timeliness of Protest  
Iowa Code § 96.7(2)a(6) – Statement of Charges

**STATEMENT OF THE CASE:**

On February 11, 2022, the employer filed an appeal from the statement of charges dated February 9, 2022 which listed charges for the fourth quarter of 2021. A hearing was scheduled and held on May 31, 2022, pursuant to due notice. Claimant did not participate. Employer participated through witness Shelly Dollar. Official notice was taken of the administrative 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: Claimant filed a claim for unemployment insurance benefits with an effective date of August 15, 2021. She has filed weekly-continued claims for benefits for each week between August 15, 2021 and May 7, 2022.

A notice of claim was emailed to the employer from Iowa Workforce Development (IWD) on August 17, 2021 through the SIDES system. The employer did not submit a timely response to the notice of claim, which was due on August 27, 2021. The employer received a statement of charges dated February 9, 2022, which listed charges for the quarter ending December 31, 2021 and included charges for the claimant. The employer filed its appeal of that statement of charges on February 11, 2022.

The employer reported that the claimant has continued to work approximately 40 hours per week earning between \$15.75 and \$17.50 per hour. Wages reported on the claimant's weekly-continued claim appear to be significantly less than the amount of gross wages earned that the employer has reported. This issue will be remanded to the Investigation and Recovery Unit for an initial wage investigation and determination.

## REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant.

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 Code section 96.6(2) addresses the timeliness of an appeal from a representative's decision and states that an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been mailed to the employer. The failure to file a timely protest in this case was not due to any Agency error or misinformation or delay or other action on the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. The employer failed to file a protest within the time period prescribed by Iowa Code § 96.6(2) when it failed to return the employer's protest to the notice of claim that was mailed to it on August 17, 2021. Because the protest was untimely, there is no jurisdiction to make a decision regarding the claimant's eligibility for benefits or chargeability of the employer's account. *Id.*; *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

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.

(emphasis added).

Iowa Admin. Code r. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(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 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.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the

protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

Iowa Code section 96.7(2)a(6) states that 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. However, if the employer did receive notice of the claim, it cannot appeal the eligibility of an individual to receive benefits based upon the receipt of a statement of charges. Iowa Code § 96.7(2)a(6).

In this case, the failure to file a timely protest to the notice of claim was not due to Agency error or misinformation pursuant to Iowa Admin. Code r. 871-24.35(2). The employer's first notification of the claimant's claim for benefits was when it received the notice of claim via the SIDES system on August 17, 2021. No response was provided by the employer to the notice.

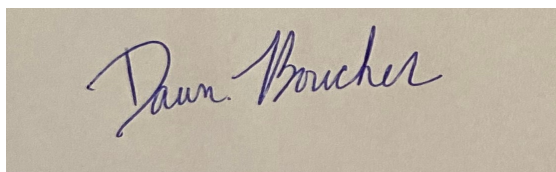
An employer is only allowed to appeal to the department for a hearing to determine the eligibility of the individual to receive benefits if they were not previously notified pursuant to Iowa Code § 96.6(2) of the notice of claim. In this case, the employer was mailed a notice of claim and given an opportunity to respond, which it failed to do. As such, the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6) have not been met.

**DECISION:**

The February 9, 2022 statement of charges for the fourth quarter of 2021 is affirmed at this time. The employer failed to file a timely protest to the claim and has not met the conditions for appealing the statement of charges under Iowa Code § 96.7(2)a(6).

**REMAND:**

The issue whether the claimant has reported correct gross wages earned each week shall be remanded to the Investigation and Recovery Bureau of Iowa Workforce Development for a wage investigation and determination.

A handwritten signature in blue ink that reads "Dawn Boucher". The signature is written in a cursive style on a light-colored, textured background.

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Dawn Boucher  
Administrative Law Judge

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June 3, 2022  
Decision Dated and Mailed

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