

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAMES J YAPP
Claimant

CITY OF HUXLEY
Employer

APPEAL 22A-UI-02944-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/15/20
Claimant: Respondent (1R)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(8)B(4) – Notice of Reimbursable Charges

STATEMENT OF THE CASE:

On January 19, 2022, the employer filed an appeal from the notice of reimbursable benefit charges dated January 15, 2022 which listed charges for the fourth quarter of 2021. A hearing was scheduled and held on February 28, 2022, pursuant to due notice. Claimant participated personally. Employer participated through witness Lisa Wheeler. Official notice was taken of the administrative record.

ISSUES:

Was the employer's protest to the notice of wage transfer timely?
Was the employer's appeal from the notice of reimbursable benefit 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 November 15, 2020. This was a combined wage claim with his wages being transferred to Minnesota.

No Notice of Wage Transfer was mailed to the employer from Iowa Workforce Development (IWD) in 2020 when the claimant filed his claim for benefits. The employer's first notice of the claim for transfer of wage credits was the receipt of the statement of charges mailed January 15, 2022, which listed charges for the quarter ending December 31, 2021. The employer filed its appeal of that notice of reimbursable benefit charges on January 19, 2022. The employer intended to protest charges to its account.

The employer has since received a notice of wage transfer dated February 17, 2022 with a due date of February 23, 2022 listed on it from Iowa Workforce Development (IWD). The employer faxed a response to the notice back to IWD prior to the deadline to do so. The issue of whether the employer's account may be subject to charges has not been adjudicated by the IWD Benefits Bureau. Because this is a combined wage claim, the issue of whether the claimant was eligible for benefits is determined in the State for which the claim was filed, which was Minnesota.

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 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(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 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 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 96.7(2)a(6), which applies to contributory employers, provides guidance in the situation here, which deals with a reimbursable employer. It 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.

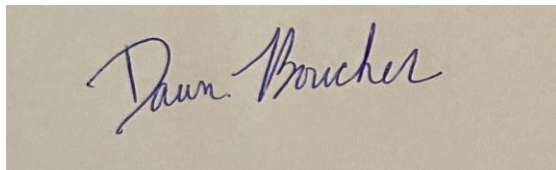
In this case, the failure to file a timely protest to the notice of wage transfer was due to Agency error or misinformation pursuant to Iowa Admin. Code r. 871-24.35(2) because no notice of wage transfer was sent to the employer when the claimant filed his November 15, 2020 claim. The administrative law judge concludes that the employer filed its appeal of the notice of reimbursable benefit charges within the time period prescribed by the Iowa Employment Security Law because it did not receive any initial notice of wage transfer indicating the claimant had filed a claim for benefits in 2020. The employer's appeal of that notice of reimbursable benefit charges, which was done on January 19, 2022, is timely. The issue of whether the employer's account is chargeable for benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination. The issue whether the claimant is eligible for benefits is determined by the State of Minnesota as this is a combined wage claim.

DECISION:

The January 15, 2022 notice of reimbursable benefit charges for the fourth quarter of 2021 is affirmed pending a determination on the remanded issue. The employer has filed a timely appeal from the January 15, 2022 notice of reimbursable benefit charges as no initial notice of wage transfer was sent to the employer in 2020 when the original claim was filed.

REMAND:

The issue of whether the employer's account may be subject to charges shall be remanded to the Benefits Bureau for an initial investigation and determination.



Dawn Boucher
Administrative Law Judge

March 11, 2022
Decision Dated and Mailed

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