

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**BOZHIDAR K SHOPOV**  
Claimant

**APPEAL 19A-UI-03198-H2T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SIOUX CITY SYMPHONY ORCHESTRA**  
**ASSN**  
Employer

**OC: 06/10/18**  
**Claimant: Respondent (1)**

Iowa Code § 96.7(8)B(4) – Appeal from the Statement of Reimbursable Charges  
Iowa Code § 96.6(2) – Timeliness of Protest  
Iowa Admin. Code r. 871-23.43(9) – Combined wage claim transfer of wages

**STATEMENT OF THE CASE:**

The employer filed an appeal from the first quarter 2019, statement of reimbursable charges that notified them that their account was being charged for benefits paid to claimant. The parties were properly notified about the hearing. A telephone hearing was held on May 7, 2019. Claimant participated with the assistance of Language Link Bulgarian interpreter, Donna, identification number 5070. Employer participated through Travis Morgan, CEO. Official notice was taken of agency records.

**ISSUES:**

Did the employer file a timely protest to the notice of proposed wage transfer?  
Did the employer file a timely appeal to the statement of reimbursable charges?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant was separated from this employer in 2017. Claimant filed a claim for unemployment insurance benefits in Nebraska and asked that wages earned from this employer in Iowa be transferred to Nebraska. On June 14, 2018 a notice was mailed to the employer telling them that the claimant had filed an interstate claim and that there Iowa account may be charged for benefits unless they returned the form giving detailed information regarding the claimant's separation from employment. The employer was given until June 24, 2018 to provide the required information and to file an objection to the wages they paid claimant being transferred to the state of Nebraska. In 2012, 2013 and 2017 the employer properly filed their objection to a wage transfer for this claimant.

The employer received the notification of wage transfer and thought they had filed an objection in June 2018. There is no record of the employer filing an objection. The employer had no record of having filed an objection to the wage transfer.

On April 18, the employer appealed the notice of reimbursable benefit charges. Employer wishes to protest the claim and the transfer of wages to Nebraska.

## REASONING AND CONCLUSIONS OF LAW:

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, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

Iowa Administrative Code 871-23.43(9) provides:

Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. No reimbursement so payable shall be charged against a contributory employer's account for the purpose of Iowa Code section 96.7, unless wages so transferred are sufficient to establish a valid Iowa claim, and such charges shall not exceed the amount that would have been charged on the basis of a valid Iowa claim. However, an employer who is required by law or by election to reimburse the trust fund will be liable for charges against the employer's account for benefits paid by another state as required in Iowa Code section 96.8(5), regardless of whether the Iowa wages so transferred are sufficient or insufficient to establish a valid Iowa claim. Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer, which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. **This protest must be postmarked or received by the department within ten days of the date on the notice to be considered as a timely protest of charges.** If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

An employer who did not receive notice of the claim (or in this case the notice of transfer of wages) may appeal to the department for a hearing to determine the eligibility of an individual to receive benefits. Iowa Code section 96.7(2)a(6).

In this case, the employer filed the appeal to the notice of reimbursable benefit charges within the 15-day deadline. The only issue is whether employer received notice of the transfer of wages to Nebraska.

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. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of that court in that decision 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.

By analogy to appeals from initial determinations, the ten day period for filing a protest is jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the protesting party was constitutionally invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the protester was deprived of a reasonable opportunity to assert the protest in a timely manner. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973).

The administrative law judge concludes that the employer did receive notice of the transfer of wages at the correct mailing address and therefore it was not deprived of a reasonable opportunity to assert the protest to the transfer of wages in a timely fashion. Employer had the opportunity to respond to the notices of wage transfer sent to them. The employer chose not to file the protest to the transfer of wages to the state of Nebraska. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand the case for a fact-finding interview. Iowa Code § 96.6(2). The transfer of wages to the state of Nebraska will remain in effect and charges to the employer's account will remain in effect.

#### **DECISION:**

The April 15, 2019, notice of reimbursable benefit charges is affirmed. The employer did not file a timely protest to the transfer of wages to the state of Nebraska. The charges shall remain in full force and effect.

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Teresa K. Hillary  
Administrative Law Judge

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Decision Dated and Mailed

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