

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

MARQUEZ J SMITH
Claimant

APPEAL NO: 12A-UI-11804-SWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

CHICAGO CUBS BASEBALL CLUB LLC
Employer

**OC: 10/02/11
Claimant: Appellant (2)**

Section 96.6-2 – Timeliness of Protest

Section 96.7-2-a(6) – Appeal from Quarterly Statement of Benefit Charges

STATEMENT OF THE CASE:

The claimant appealed an unemployment insurance decision dated September 21, 2012, reference 01, that concluded he was not eligible for benefits between athletic seasons. A telephone hearing was held on October 29, 2012. Proper notice of the hearing was given to the parties. The claimant participated in the hearing. Julia Katz participated on behalf of the employer with a witness, Danielle Alexa. Exhibits A-1 and One were admitted into evidence at the hearing. The parties agreed that the issue of whether the employer filed a timely protest or a timely appeal of the quarterly statement of benefit charges could be considered and resolved.

ISSUES:

Did the employer file a timely protest of the claim?

Did the employer file a timely appeal from a quarterly statement of benefit charges?

FINDINGS OF FACT:

The claimant filed a new claim for unemployment insurance benefits effective October 2, 2011, after he finished the 2011 baseball season during which he was employed as a baseball player with the Iowa Cubs.

A notice of claim was mailed to the employer's address of record on October 7, 2011, and was received by the employer within ten days. The employer was notified that its account was potentially subject to \$4,664.68 in charges unless it furnished detailed information justifying relief from charges. The notice of claim stated that any protest of the claim had to be faxed or postmarked by the due date of October 17, 2011. The employer received the notice of claim but did not protest the claim at that time. The notice of claim has a specific box to check for an athlete who has reasonable assurance of performing services in a successive year.

The claimant received \$4,664.68 in benefits charged to the employer's account from October 2, 2011, through January 7, 2012.

On February 9, 2012, the Agency sent the employer a fourth quarter 2011 statement of benefit charges, including \$4,128 in benefits paid to the claimant. The notice was sent to the employer's address of record and was received by the employer. The statement of charges notified the employer that it had 30 days of its mailing to appeal the charges, but the employer did not file any appeal from the quarterly statement of benefit charges.

On May 9, 2012, the Agency sent the employer a first quarter 2012 statement of benefit charges, including \$536.68 in benefits paid to the claimant. The notice was sent to the employer's address of record and was received by the employer. The statement of charges notified the employer that it had 30 days of its mailing to appeal the charges. On June 8, 2012, the employer responded to the statement of charges by faxing the notice of claim that had been mailed to the employer on October 7, 2012, along with a letter requesting a review and credit to its account of the benefits paid to the claimant. In its response, the employer asserted the claimant was an athlete on leave between successive sport seasons and had reasonable assurance of returning to work for the employer.

REASONING AND CONCLUSIONS OF LAW:

The issue in this case is whether the employer filed a timely protest of the claimant's claim for unemployment insurance benefits

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.

Part of the same section of the unemployment insurance law deals with the timeliness of an appeal from a representative's decision and states 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 employer failed to file a protest within the time period prescribed by Iowa Code section 96.6-2. The failure to file a timely protest was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing the protest. Since the protest was untimely, there is no jurisdiction to make a decision regarding the claimant's eligibility for benefits. See Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979). The employer labeled the Notice of Claim as containing "New Information," but in fact everything in the protest was information known to the employer in October 2011 when the claimant filed his claim.

The result in this case is reinforced by Iowa Code § 96.7-2-a(6), which states: "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 [of the quarterly statement of charges] 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.”

Section 96.6, subsection 2, is the section of the law requiring IWD to give an employer notice of a claim and the right to protest it. “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.” In this case, the employer acknowledged it had received notice of the claim but had not protested it. In fact, the employer had received notice in February 2012 that the claimant had been paid and the employer’s account had been charged for \$4,128, but never appealed the statement of charges. Because the employer was properly notified about the filing of the claim and allowance of benefits to the claimant, no appeal is authorized under Iowa Code § 96.7-2-a(6).

The employer argues that the timely protest issue and timely appeal from the quarterly statement of benefit charges issue cannot be raised because the Agency accepted its protest and appeal from the statement of charges and issued a decision. My ruling in this case the timely protest and appeal issues are jurisdictional under the law and must be raised. There was no new information regarding the separation from work that was not known to the employer when the notice of claim was sent to the employer to prompt the appeal in June 2012 and the conditions for appealing under Iowa Code § 96.7-2-a(6) have not been met.

DECISION:

The unemployment insurance decision dated September 21, 2012, reference 01, is reversed. The employer failed to file a timely protest and has not met the conditions for appealing under Iowa Code § 96.7-2-a(6). The claimant was qualified to receive unemployment insurance benefits.

Steven A. Wise
Administrative Law Judge

Decision Dated and Mailed

saw/kjw