

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

---

**DOMINIC V CABEREA**  
Claimant

**BRICK FURNITURE OF MASON CITY INC**  
Employer

**APPEAL 23A-UI-11200-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 07/02/23  
Claimant: Respondent (1)**

---

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

**STATEMENT OF THE CASE:**

On December 1, 2023, Brick Furniture of Mason City Inc (employer) filed an appeal from the statement of charges dated November 9, 2023, reference 05, for the second quarter of 2023. A hearing was held on December 19, 2023, pursuant to due notice. Dominic V. Caberea (claimant) did not respond to the hearing notice and did not participate. The employer participated through Owner Tara Brick. The Department's Exhibits 1, 2, 3, 4, D1, D2, D3, and D4 were received.

**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:

The notice of claim was mailed to the employer's address of record on July 5, 2023. (Exhibit D1) Assistant Manager Kevin Herbst sent the protest back to Iowa Workforce Development on July 12, 2023. (Exhibit 1)

Ms. Brick's husband, Matt Brick, passed away on July 7, 2023. His funeral was on July 14, 2023.

A fact-finding interview was conducted on July 18, 2023. (Exhibit 3) On July 19, 2023, Iowa Workforce Development Department issued a decision finding the claimant eligible for unemployment insurance benefits. The decision stated that the claimant was discharged on April 10, 2023, but a review of the record found that misconduct was not shown.<sup>1</sup> (Exhibit 4) The

---

<sup>1</sup> The administrative law judge tried to explain on the record that he has not heard this factfinding interview. He gave the explanation of misconduct under the law in response to Ms. Brick's question.

claimant's appeal was taken as an appeal to this separation decision as well. This administrative law judge issued a default decision, 23A-UI-11199-SN-T.<sup>2</sup>

Ms. Brick was so busy with starting her own career and arrangements after Mr. Brick's death that she did not return to help with the internal operations of the employer until October 2023. She was unaware of the decision granting benefits until she received the statement of charges dated November 9, 2023. (Exhibit D2)

Ms. Brick explained that the employer had a secretary, but that secretary was only tasked with opening mail. She likely did not have the wherewithal to know to appeal the decision. Mr. Brick reserved many of these duties to himself. Mr. Herbst did not expect a decision granting benefits based on his participation in the fact-finding interview and so he assumed the best.

On December 1, 2023, the claimant appealed the statement of charges. (Exhibit D3)

### **REASONING AND CONCLUSIONS OF LAW:**

The administrative law judge concludes the employer did not timely file its appeal to the statement of charges.

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.

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. 871-26.4 provides, in relevant part:

2. An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp after

---

<sup>2</sup> On the hearing record, the claimant appeared to claim that she only received notice for the 23A-UI-11200-SN-T hearing. This administrative law judge refused her request to reopen the record because the administrative records showed a hearing notice was sent for 23A-UI-11199-SN-T.

the decision was mailed to the party at its last-known address and shall state the following:

- a. The name, address and social security number of the claimant;
- b. A reference to the decision from which appeal is taken; and,
- c. The grounds upon which the appeal is based.

3. 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.

4. Also notwithstanding the provisions of subrule 26.4(2), a reimbursable 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 15 days of the mailing date of the quarterly billing of benefit charges.

The employer timely responded to the notice of claim. It also had one of its agents provide testimony at the fact-finding interview. Iowa Workforce Development Department issued a decision granting benefits dated July 19, 2023, reference 01.

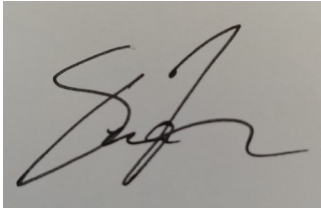
The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982).

Ms. Brick contends that her agent that participated in the fact-finding interview did not suspect the decision would find for the claimant. She also alleges that she was in the middle of responding to Mr. Brick's death and the weighty responsibilities he had placed on himself regarding the employer's maintenance. The administrative law judge is empathetic to these concerns, but ultimately these are reasons entirely attributable to the employer. Generally, a party requires circumstances beyond its control to extend the appeal period. Ms. Brick presents very good personal reasons for not being engaged earlier on, but these are not reasons that the administrative law judge is allowed to consider regarding extension of an appeal period.

The administrative law judge finds the employer should have appealed the decision dated July 19, 2023, reference 01, around the time of its mailing since there were not circumstances beyond its control preventing it from doing so. Benefits are granted.

**DECISION:**

The November 9, 2023, reference 05, statement of charges for the second quarter of 2023 is AFFIRMED. The employer did not timely file an appeal from the first notification it had that the claimant was still receiving benefits following a change in employment status.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

---

Sean M. Nelson  
Administrative Law Judge II

December 21, 2023  
Decision Dated and Mailed

smn/scn

**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 Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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 Avenue Suite 100  
Des Moines, Iowa 50321  
Fax: (515)281-7191  
Online: [eab.iowa.gov](http://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 se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

**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.