

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

MICHAEL D DAWSON
Claimant

APPEAL 24A-UI-01866-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TASLER INC
Employer

**OC: 09/03/23
Claimant: Respondent (1-R)**

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 February 14, 2024, Tasler (employer) filed an appeal from the statement of charges dated February 9, 2024, reference 02, for the fourth quarter of 2023. The hearing was initially scheduled for March 12, 2024. The employer requested postponement and it was granted.

A hearing was held on March 20, 2024, pursuant to due notice. Michael D. Dawson (claimant) did not respond to the hearing notice and did not participate. The employer participated through Vice President Jessi Olmstead. Exhibits 1, 2, D1, D2, and D3 were received in the 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:

The notice of claim was sent electronically by the State Information Data Exchange System (SIDES) to the employer's address of record on September 6, 2023.

On September 7, 2024, Vice President Jessi Olmstead filed the employer's response. On her SIDES response, Ms. Olmstead wrote that the claimant was laid off for one week beginning on September 1, 2023, and ending on September 11, 2023. Ms. Olmstead also reported that the claimant would earn \$156.00 for Labor Day.

The administrative record shows there is no decision regarding whether the claimant continued to be unemployed in some capacity after September 11, 2023.

The claimant then requested that he be given part-time hours in September 2023. In his request, the claimant said he would like to work an average of 20 hours per week. Nevertheless, the claimant has not met that minimum threshold for his hours since he went to part-time. The

administrative records show that the claimant reported variable wages from the week ending September 23, 2023 through the week ending October 21, 2023.

The claimant continued to make weekly claims for the rest of September, October, November, and December. The claimant began reporting zero earnings in late-October and early-November 2023. He reported earning \$180.00 for the week ending November 11, 2023. He reported zero earnings for the remainder of the claim. The final week he claimed was the week ending December 23, 2023.

The employer received a statement of charges dated February 9, 2024, for the fourth quarter of 2023. The statement included a charge for benefits paid to the claimant beginning September 3, 2023. The employer filed its appeal of that statement of charges on February 14, 2024.

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge concludes the employer timely filed its appeal to the statement of charges. The appeal is also appropriate because the employer promptly provided Iowa Workforce Development Department with information through SIDES to begin an investigation. No investigation has been conducted into whether the claimant remained unemployed after a temporary layoff, so the employer's appeal is appropriate.

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 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's appeal to the statement of charges is timely because it filed it within 30 days of receipt of the statement of charges.

The administrative law judge finds the employer's appeal from the statement of charges appropriate because it provided enough information on its SIDES response to give Iowa Workforce Development Department notice of the claimant's return to work on September 11, 2023. The employer did not have any earlier opportunity to correct this error. As a result, the employer's appeal of the statement of charges is granted.

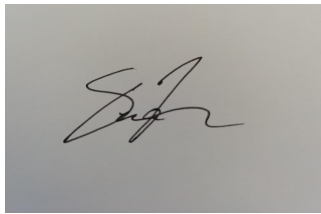
DECISION:

The February 9, 2024, reference 02, statement of charges for the fourth quarter of 2023 is **AFFIRMED** pending an investigation of the remanded issues. The employer filed a timely appeal from the first notification it had that the claimant was still receiving benefits after it provided timely protest that the claimant would return to work on September 11, 2023.

REMAND:

The administrative law judge remands to the Benefits Bureau the following issues with due process rights given to both parties.

Whether the claimant was receiving the same hours and wages when he returned on September 11, 2023. And whether a reduction in his hours as outlined in the findings of facts is due to the claimant's choice to work only part-time with variable hours or other factors.

A rectangular box containing a handwritten signature in black ink. The signature is cursive and appears to read "Sean M. Nelson".

Sean M. Nelson
Administrative Law Judge II

March 22, 2024
Decision Dated and Mailed

SMN/jkb

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**

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**

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.