

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

DONALD L LINDQUIST
Claimant

CASEYS MARKETING COMPANY
Employer

APPEAL 22A-UI-17936-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/02/21
Claimant: Respondent (1-R)**

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(8)B(4) – Application for Redetermination

STATEMENT OF THE CASE:

On August 31, 2022, Casey's Marketing Company (employer) filed an appeal from the statement of charges dated August 9, 2022, reference 03, for the second quarter of 2022. After multiple continuances, a telephone hearing was held at 11:00 a.m. on Wednesday, December 7, 2022, pursuant to due notice. Appeal numbers 22A-UI-17935-LJ-T and 22A-UI-17936-LJ-T were heard together and created one record. Donald L. Lindquist (claimant) did not participate. Employer Casey's Marketing Company participated through Valeu NSN employee Marideliz Ortiz. The administrative law judge took official notice of the administrative record, including: the Notice of Claim provided through the SIDES system on May 12, 2021; the response received through the SIDES system on May 24, 2021; the Notice of Claim provided through the SIDES system on March 11, 2022; the response received through the SIDES system on March 25, 2022; the unemployment insurance decision dated April 6, 2022 (reference 02); appeal decision 22A-UI-09551-X; and the August 9, 2022 statement of charges for the second quarter of 2022.

ISSUES:

Is the employer's protest timely?
Did the employer timely appeal the statement of charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant initially opened a claim for benefits effective May 2, 2021. This employer is the only employer in claimant's base period of employment. The notice of claim was provided to the employer in the SIDES system with an e-mail alert on May 12, 2021. Ortiz had no firsthand knowledge of this notice of claim or response, as Valeu NSN was not the employer's third-party servicer at the time. The response to the notice of claim, received in SIDES on May 24, 2021, indicates claimant was experiencing a lack of work due to the COVID-19 pandemic.

The claimant later established an additional claim date of March 6, 2022, after he permanently separated from the employer. At that time, another notice of claim was provided to the

employer on March 14, 2022, via mail and on March 11, 2022, in the SIDES system. The employer received the notice of claim via mail and submitted a response on March 24, 2022. On April 6, 2022, Iowa Workforce Development issued a decision (reference 02) allowing benefits based on the claimant's separation from employment. The employer appealed that decision on April 15, 2022. On June 28, 2022, an administrative law judge issued a decision (22A-UI-09551-X) reversing the reference 02 allowance of benefits, finding "Claimant was terminated based on disqualifying misconduct..." 22A-UI-09551-X at 4. Claimant did not appeal that decision.

The outcome of the appeal hearing was incorrectly entered into IWD's mainframe as an affirmance, indicating that the claimant should continue to receive benefits and the employer's account should continue to be charged. There was no way for the employer to know this had happened prior to receiving additional statements of charges. Further, had the employer appealed to the Employment Appeal Board, that appeal would have been properly dismissed as moot: the employer would be appealing a decision in their favor, as they had prevailed before the administrative law judge.

Claimant opened a claim in a second claim year with an effective date of May 1, 2022. There is no evidence available in the Alfresco database or the SIDES system indicating a notice of claim was sent to the employer. Ortiz has no record of Valeu NSN receiving a notice of claim at that time. Next, the employer received the August 9, 2022 statement of charges for the second quarter of 2022. This statement of charges lists claimant's May 2, 2021 claim for benefits, with corresponding charges of \$650.00. The statement of charges also lists claimant's May 1, 2022 claim for benefits, with corresponding charges of \$3,654.00. The employer appealed the statement of charges on August 31, 2022.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, 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 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.

An employer may only appeal a claimant's eligibility for benefits through the quarterly statement of charges in cases where that employer has not previously received notice of the filing of a valid claim for unemployment insurance benefits. See Iowa Code § 96.7(2)a(6). Here, the employer had – and availed itself of – the opportunity to review and respond to the notice of claim, both at the outset of the claim year and the establishment of the additional claim date upon the claimant's separation from employment. Therefore, an appeal of the statement of charges is not the appropriate procedural path to remedy the issue at hand.

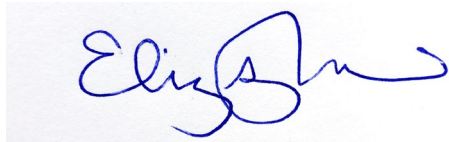
However, the employer was charged for benefits when it should not have been, and it had no knowledge that it needed appeal to fix the error which had transpired on IWD's end of the process. This is an injustice that can – and shall – be fixed through remand to the Benefits Bureau, to review the administrative law judge's decision (22A-UI-09551-X) and issue any appropriate overpayment decision to the claimant and credit back to the employer on a future statement of charges consistent with that decision.

DECISION:

The August 9, 2022, reference 03, statement of charges for the second quarter of 2022 is affirmed, pending the outcome of the remanded issue.

REMAND:

This matter is remanded to the Benefits Bureau to review the administrative law judge's decision in docketed appeal 22A-UI-09551-X and to issue any appropriate overpayment decision to the claimant and credit back to the employer on a future statement of charges consistent with that decision.



Elizabeth A. Johnson
Administrative Law Judge

December 12, 2022
Decision Dated and Mailed

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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
4th Floor – Lucas Building
Des Moines, Iowa 50319
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
4th Floor – Lucas Building
Des Moines, Iowa 50319
Fax: (515)281-7191
En línea: 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.