

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JESSICA RUIZ HEMMEN
Claimant

BLACK HAWK COUNTY
Employer

APPEAL 20A-UI-00905-DB-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/07/19
Claimant: Respondent (3)

Iowa Code § 96.6(2) – Timeliness of Employer Protest

STATEMENT OF THE CASE:

The employer filed a timely appeal from an unemployment insurance decision dated January 27, 2020 (reference 04) which allowed benefits to the claimant due to a lay-off on December 31, 2018. Both parties waived due notice and a hearing was held on February 12, 2020. The hearing was consolidated with Appeal No. 20A-UI-00786-DB-T. Claimant participated personally. Employer participated through witness Amanda Fessenmeyer. The administrative law judge took official notice of the administrative records, including the employer's statement of protest and the previous notice of reimbursable benefit charges dated October 15, 2019.

ISSUE:

Did the employer file a timely protest?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed an initial claim for unemployment insurance benefits with an effective date of July 7, 2019. Iowa Workforce Development ("IWD") emailed the employer a Notice of Claim on July 8, 2019. The employer filed an untimely Statement of Protest on July 23, 2019, which was after the due date of July 19, 2019. The employer did not file an appeal to the notice of reimbursable benefit charges that was mailed to it on October 15, 2019, which listed benefit payments for the claimant's account.

The employer is protesting the claim on the basis that the employer sold the business to a third party and claimant became employed with that company. Claimant was employed full-time as a social worker II with this employer from March 3, 2015 until December 31, 2018. Her employment with this employer ended when the employer sold the nursing home facility to Pritok Capital d/b/a Black Hawk Nursing and Rehab.

REASONING AND CONCLUSIONS OF LAW:

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 sent.

An exception exists to filing a response within ten days if there is credible evidence that the delay was due to agency error, misinformation or delay, or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). **However, if the employer has failed to file a timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make any determination with respect to the nature of the claimant's separation from employment.** See *Beardslee*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

Iowa Code § 96.7(c) provides as follows:

7. Financing benefits paid to employees of governmental entities.

c. For the purposes of this subsection, "governmental reimbursable employer" means an employer which makes payments to the department for the unemployment compensation fund in an amount equal to the regular and extended benefits paid, which are based on wages paid for service in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the department shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph "b", subparagraphs (2) through (5).

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 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.

Iowa Code section 96.7(2)a(6), which applies to contributory employers, provides guidance in the situation here, which deals with a reimbursable employer. It states that an employer who did not receive notice of the claim may appeal to the department for a hearing to determine the eligibility of an individual to receive benefits. However, an employer is only allowed to appeal the statement of charges for a hearing to determine the eligibility of the individual to receive benefits **if** they were not previously notified pursuant to Iowa Code § 96.6(2) of the allowance of benefits.

In this case, the employer was previously notified of the claim when the notice of claim was emailed to it and it failed to file a timely protest. No good cause reason for the late filing of the protest was established pursuant to Iowa Admin. Code r. 871-24.35(2). Because the employer did not protest the initial notice of claim in a timely manner, the administrative law judge lacks jurisdiction to determine the nature of the separation from employment. As such, whether the claimant's separation from employment disqualifies her from receiving unemployment insurance benefits is moot. The claimant is eligible for benefits based upon the employer's failure to timely file a timely protest to the notice of claim. Accordingly, benefits are allowed effective July 7, 2019 and the employer's account may be subject to charges.

DECISION:

The January 27, 2019 (reference 04) decision is modified in favor of the respondent/claimant. The employer failed to file a timely protest. The claimant is eligible for benefits effective July 7, 2019, provided she meets all other eligibility requirements. The employer's account may be subject to charges.

Dawn Boucher
Administrative Law Judge

Decision Dated and Mailed

db/rvs