

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

DAVID A SYKES
Claimant

APPEAL 24A-UI-01978-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

TERZO ENTERPRISES INCORPORATED
Employer

**OC: 10/22/23
Claimant: Respondent (1R)**

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:

Terzo Enterprises Incorporated, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) February 9, 2024 Statement of Charges for the Fourth Quarter of 2023 that listed charges of \$5,008.00 to the employer's account for UI benefits IWD paid to Mr. Sykes. On February 23, 2024, the Iowa Department of Inspections, Appeals, and Licensing (DIAL), UI Appeals Bureau mailed a notice of hearing to the employer and Mr. Sykes for a telephone hearing scheduled for March 13, 2024.

The administrative law judge did not hold a hearing because there is sufficient information in the employer's appeal letter, and IWD records to resolve the appeal without testimony. The administrative law judge took official notice of the administrative record.

ISSUE:

Did the employer protest Mr. Sykes' UI claim on time?
Did the employer appeal from the Statement of Charges on time?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the undersigned finds: Mr. Sykes applied for UI benefits effective October 22, 2023. IWD sent the employer a Notice of Mr. Sykes' UI claim. The employer responded to the Notice.

IWD then issued a November 8, 2023 (reference 01) UI decision. The decision found Mr. Sykes eligible for REGULAR (state) UI benefits because IWD concluded that the employer discharged him from work on February 27, 2023 for a reason that did not disqualify him from receiving UI benefits. The employer appealed this decision. The December 28, 2023 Administrative Law Judge Decision in Appeal 23A-UI-10772-SN-T reversed the decision, concluding that Mr. Sykes is not eligible for UI benefits based on how his job ended with this employer, and the employer's

¹ Appellant is the person or employer who filed the appeal.

account is not to be charged. As of March 6, 2024, no party has appealed the Administrative Law Judge Decision.

IWD mailed the employer the February 9, 2024 Statement of Charges. The employer received the Statement. The employer appealed the Statement via online on February 19, 2024.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes: The employer protested Mr. Sykes' UI claim on time, appealed the November 8, 2023 (reference 01) UI decision on time, and appealed the February 9, 2024 Statement of Charges on time.

Iowa Code section 96.6(2) provides:

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 issuance of the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(2) The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the division that the delay in submission was due to division error or misinformation or to delay or other action of the United States postal service.

- a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 Admin. Code r. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 655317, Notice of Claim, or Form 680221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 600154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 655317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

Iowa Code section 96.6(2) addresses the timeliness of an appeal from an IWD representative's decision and states that 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.² This reasoning should also apply to the time limit for filing a protest after IWD sends a Notice of Claim to an employer.

Iowa Code section 96.7(2)a(6) provides that an employer who did not receive a Notice of Claim may file an appeal to determine the claimant's eligibility to receive UI benefits. But if the employer received Notice of the Claim and did not protest the claim, the employer cannot appeal the claimant's eligibility to receive UI benefits based on the employer receiving the Statement of Charges.

In this case, the employer received the Notice of Claim for Mr. Sykes' UI claim and protested the claim. The employer protested Mr. Sykes' UI claim on time. The employer also received the February 9, 2024 Statement of Charges from IWD and appealed the Statement on February 19, 2024. The employer appealed the Statement before the deadline. So, the employer appealed the Statement on time.

The Administrative Law Judge Decision in Appeal 23A-UI-10772-SN-T already concluded that the employer's account is not to be charged for the \$5,008.00 IWD paid Mr. Sykes. The decision is dated December 28, 2023, which was three days before the end of the Fourth Quarter of 2023. No party appealed this decision, and the decision has become final agency action.

IWD should issue a credit to the employer's account based on the Administrative Law Judge Decision in Appeal 23A-UI-10772-SN-T.

² *Beardslee v. IDJS*, 276 N.W.2d. 373 (Iowa 1979).

DECISION:

The February 9, 2024 Statement of Charges for the Fourth Quarter of 2023 is AFFIRMED. The employer protested the Notice of Claim for Mr. Sykes' UI claim on time, appealed the November 8, 2023 (reference 01) UI decision on time, and appealed the February 9, 2024 Statement of Charges on time.

REMAND:

This matter is REMANDED (sent back) to the IWD Tax Bureau to issue a credit to the employer's account for the \$5,008.00 IWD paid to Mr. Sykes, and any other necessary action.



Daniel Zeno
Administrative Law Judge

March 7, 2024
Decision Dated and Mailed

DZ/jkb

APPEAL RIGHTS. If you disagree with this 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
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 adquiera 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.