

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

CHRISTINA S BURGIN

Claimant

APPEAL 23A-UI-01554-AR-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

WEST LIBERTY FOODS LLC

Employer

OC: 10/16/22

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:

On February 14, 2023, the employer filed an appeal from the February 9, 2023, (reference 04) statement of charges for the fourth quarter of 2022. The parties were properly notified about the hearing. A telephone hearing was held on March 2, 2023. Claimant, Christina S. Burgin, did not participate. Employer, West Liberty Foods, LLC, participated through HR Supervisor Monica Dyar. The administrative law judge took official notice of the administrative 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: Claimant filed a claim for unemployment benefits with an effective date of October 16, 2022, after a separation from employment that occurred on October 15, 2022.

Iowa Workforce Development (IWD) sent a notice of claim to the employer via the United States Postal Service on October 19, 2022. The employer responded to the notice of claim on October 25, 2022, by faxing the notice of claim back to IWD. Thereafter, the agency did not process the notice of claim immediately.

The next notice the employer received regarding claimant's claim for benefits was the statement of charges mailed February 9, 2023. The employer appealed the statement of charges on February 14, 2023.

After the employer appealed the statement of charges, it received a notice of fact finding from IWD that set a fact-finding interview regarding the October 15, 2022, separation from employment for March 1, 2023. The employer provided information regarding the separation during the March 1, 2023, fact-finding interview.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer has not appropriately appealed 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.

(Emphasis added.) As pointed out in emphasis above, an employer may only appeal a claimant's eligibility for benefits through the quarterly statement of charges when it has not previously received notice of the filing of a valid claim for benefits. As of the date of receipt of the statement of charges, the employer had not received a decision with appeal rights regarding claimant's eligibility for benefits from IWD. However, as of March 1, 2023, the agency took steps indicating it will issue a decision regarding the separation from employment and/or a decision regarding the timeliness of the employer's protest, with appeal rights. Because of the subsequent actions by the agency, in the time after the employer filed its appeal of the statement of charges, the appropriate remedy is no longer an appeal of the statement of charges.

DECISION:

The February 9, 2023, (reference 04) statement of charges for the fourth quarter of 2022 is AFFIRMED.

REMAND:

The issue is remanded to the Tax Bureau of Iowa Workforce Development for review and issuance of any action deemed appropriate, consistent with the Benefits Bureau's determination on the separation.



Alexis D. Rowe
Administrative Law Judge

March 3, 2023
Decision Dated and Mailed

ar/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
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.