

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

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**JACOB S SMITH**  
Claimant

**CAMP HIGH HOPES**  
Employer

**APPEAL NO. 23A-UI-08453-JT-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 09/20/20**  
**Claimant: Respondent (1)**

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Iowa Code Section 96.6(2) - Timeliness of Protest  
Iowa Code Section 96.7(2)(a)(6) – Appeal from Statement of Charges

**STATEMENT OF THE CASE:**

On September 5, 2023, the employer re-filed an appeal from the Statement of Charges that Iowa Workforce Development mailed to the employer on February 9, 2021 and that included a charge for benefits paid to the claimant during the quarter that ended December 31, 2020. After due notice was issued, the appeal hearing was held on October 4, 2023. Jacob Smith (claimant) participated. Teresa Brus represented the employer. Employer Exhibits 1 through 6 and Department Exhibits D-1 through D-5 were received into evidence.

**ISSUES:**

Whether the employer’s protest of the claim for benefits was timely.  
Whether there is good cause to deem the employer’s late protest as timely.  
Whether the employer filed a timely appeal from the Statement of Charges.  
Whether the Statement of Charges is correct.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds:

Jacob Smith (claimant) established an original claim for benefits that was effective September 20, 2020. Iowa Workforce Development set the weekly benefit amount at \$360.00. During the fourth quarter of 2020, Iowa Workforce Development disbursed \$2,866.00 in gross benefits to the claimant for the nine weeks between September 20, 2023 and November 21, 2023.

Camp High Hopes (employer account number 366137) is a base period employer in connection with the claim. Camp High Hopes is a “contributory” employer, rather than a “reimbursable” employer. During the second quarter of 2019, the employer paid \$1,040.64 in wages to the claimant. During the third quarter of 2019, the employer paid \$3,056.88. The corresponding base period wage credits (one-third of the wages) were \$346.88 and \$1,018.96 for the respective quarters. The base period wage credits totaled \$1,365.84.

The claimant's base period wages and base period wage credits from this employment are \$3,056.88 and \$1,018.96 respectively. The employer paid the wages during the third quarter of 2019.

On September 23, 2020, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the employer's address of record. The notice of claim set forth the claimant's weekly benefit amount (\$360) and the employer's maximum potential charge (\$1,365.84). The latter amount was the base period wage credit total, one-third of the base period wages from the employment.

The notice of claim included an October 5, 2020 due date for the employer's response. The notice of claim further stated:

As an employer of this claimant within the past 18 months from the effective date of the claim, your account may receive charges based upon wages you have paid this claimant unless you provide Iowa Workforce Development with information justifying relief from such charges. Any benefits paid may result in a rate increase to your account.

The notice of claim also stated:

The employer statement of protest section, including full date, must be completed on all responses. The information provided below in the employer statement of protest section must be certified correct, which can be accomplished by completing and signing the signature section on this form. Incomplete protest forms will be returned to the employer with the same protest due date. Protest forms submitted to Iowa Workforce Development must be postmarked or faxed by the due date shown above. No reply is necessary if the claimant was laid off for lack of work, unless the claimant received (or will receive) one of the following payments: vacation pay, severance pay, dismissal pay, separation allowance, wages in lieu of notice or holiday pay.

The employer received the notice of claim on September 28, 2020. On September 29, 2023, Teresa Brus, Office Manager/HR entered the employer's responsive information on the notice of claim form. The employer left blank the entire "statement of protest" section, numbered paragraphs 1 through 9. The employer also left blank the unnumbered box above the statement of protest section that stated, "I am NOT protesting this claim." The employer signed and dated to certify the accuracy of the information in the information set forth, or in this instance not set forth, in the statement of protest section. The employer completed numbered paragraphs 10 through 14 that solicited information regarding hours worked (48) and wages paid (\$422.76) during week of the separation and indicated a last day worked (8-9-2019). The employer indicated that paragraphs 11, 12 and 13, regarding vacation pay, severance pay or the equivalent, and holiday pay, did not apply. The employer provided year to date gross wages (\$4,097.52) in paragraph 14. In the Remarks section, the employer added the following: "He was hired as an activity leader for the Summer which ended 8/9/2019."

The lower right corner of the notice of claim form stated:

**Fact-Finding Interview Information**

If you checked disqualification(s) 2 through 9, a fact-finding interview may be necessary. You will be notified by mail of the time for the fact-finding interview and the fact-finding interview will be conducted by telephone unless it is impractical to do so.

The employer added Ms. Brus' name, title, phone number and fax number under the section heading Fact-Finding Interview Participant.

The employer faxed the notice of claim form to Iowa Workforce Development on September 29, 2020. Iowa Workforce Development Customer Service marked the document as received on September 30, 2020 and also marked the document as a non-protest. The completed notice of claim form was the only document the employer submitted to IWD in response to receiving the notice of claim form.

Because the employer did not give any indication in the response to the notice of claim that the employer was protesting the claim for benefits and did not set forth any information that would suggest the claimant should be disqualified for benefits, IWD did not schedule a fact-finding interview and did not relieve the employer of liability for benefits.

On February 9, 2021, Iowa Workforce Development mailed a quarterly Statement of Charges to the employer that included a \$1,000.81 charge for benefits paid to the claimant during the fourth quarter of 2020. The amount was less than the total benefits paid to the claimant during the quarter and less than the maximum employer liability amount (\$1,365.84) set forth on the notice of claim. The back of the Statement of Charges included contact information for the IWD Tax Bureau, Chargeback Unit in case the employer had questions about the Statement of Charges. The back of the Statement of Charges also included a section with the heading Appeal of Claimant Eligibility for Benefits. The information under the heading included the following information:

If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 30 days after the date of the mailing of this statement.

The section providing information regarding the information to include in the appeal and provided contact information for the Appeals Bureau.

The employer received the Statement of Charges on February 12, 2021. On that same day, the employer submitted an appeal to the Appeals Bureau by email. The February 12, 2021 appeal included the employer's first indication that the employer was protesting the claim:

As of today's date, we have not received a fact-finding notice regarding this claim. We are wanting to protest this claim as we do not feel we should be liable since his last day of work was August 9, 2019.

Rather than scheduling an appeal hearing, the Appeals Bureau acknowledged receipt of the February 12, 2021 appeal and, pursuant to an Iowa Workforce Development COVID-19 pandemic-related administrative directive, forwarded the matter to the Tax Bureau for further review. The employer subsequently engaged in correspondence with the Tax Bureau but was not granted an appeal hearing until after the employer re-filed its appeal on September 5, 2023.

## **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.*

[Emphasis added.]

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. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the court 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 mailed.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

(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 65-5317, Notice of Claim, or a Form 68-0221, 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.*

[Emphasis added.]

Iowa Administrative Code Rule 871-24.35(1) provides:

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

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 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.

[Emphasis added.]

Iowa Admin. Code rule 871-26.4(3) provides:

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.*

[Emphasis added.]

The employer's *protest* was untimely. The notice of claim clearly stated "your account may receive charges based upon wages you have paid this claimant unless you provide Iowa Workforce Development with information justifying relief from such charges. Any benefits paid may result in a rate increase to your account." The employer's assertion that the employer did not know its account could be charged until receipt of the Statement of Charges is without merit. Though the employer filed a response to the notice of claim prior to the October 5, 2020 deadline, nothing in that response indicated the employer was protesting payment of benefits to the claimant or charge to the employer's account. The employer's response was void of any facts that might adversely affect the claimant's benefit rights. The employer signed and dated the response to certify the accuracy and completeness of the information set forth in the response. Iowa Workforce Development Benefits Bureau and Tax Bureau logically and reasonably determined the employer was not protesting the claim. For that reason, no fact-finding interview was scheduled. The employer took no further action and did not protest the claim until February 12, 2021, when the employer responded to the Statement of Charges that was mailed on February 9, 2021. The employer's delay in protesting the claim was not attributable to error or misinformation from IWD. Nor did the USPS contribute to the delayed protest. Because the protest was untimely, the administrative law judge lacks jurisdiction to disturb IWD's initial determination regarding the claimant's eligibility for benefits and the employer's liability for benefits. Because the February 9, 2021 Statement of Charges was not the employer's first notice of the claim, the appeal rights set forth in the Statement of Charges do not apply. The charge set forth in the February 9, 2021 Statement of Charges, the eligibility determination, and the account liability determination each remain in effect.

**DECISION:**

The employer's protest was untimely. The charge set forth in the February 9, 2021 Statement of Charges, the eligibility determination, and the account liability determination each remain in effect.



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James E. Timberland  
Administrative Law Judge

October 9, 2023  
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  
4<sup>th</sup> 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>.

**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](http://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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

**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.