

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JON BURLESON
Claimant

BLACK HAWK COUNTY
Employer

APPEAL 21A-UI-23873-JC-T
**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 12/27/20
Claimant: Respondent (1)

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

STATEMENT OF THE CASE:

On October 27, 2021, Black Hawk County (employer) filed an appeal from the notice of reimbursable benefit charges dated October 15, 2021, which listed reimbursable benefit charge information for the third quarter of 2021. A telephone hearing was held on December 16, 2021, pursuant to due notice. Jon Burleson (claimant) did participate. Jaime Burleson attended as an observer. The employer did participate through Amanda Fesenmeyer, human resources director. Chari Gallmeyer attended as an observer. Official notice of the administrative records was taken. Department Exhibit D-1 was admitted.

NOTE TO EMPLOYER:

If you wish to change the contacts of record, please access your account at:
<https://www.myiowaui.org/UITIPTaxWeb/>.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant separated from employment on May 27, 2020 and filed a claim for benefits effective December 27, 2020. The notice of claim was provided to the employer in the SIDES system with an e-mail alert on December 29, 2021. Prior to claimant's separation, employer had twice contacted IWD on December 2, 2020 and December 21, 2020 about not receiving email alerts and needing to update contact information for SIDES claims. At the time the alert was emailed, IWD had not updated the contact information and the two contacts alerted of the clam had left the company. The email should have gone to Ms. Fesenmeyer but did not.

On February 19, 2021, IWD responded to the employer inquiries for contact information to be updated. However, due to the delay, employer did not receive the notification of the claim to protest and therefore, did not respond within the required ten-day period. The employer did not file a protest response to the notice of claim.

The first notice of the claimant's claim for benefits was the receipt of the notice of reimbursable benefit charges mailed April 15, 2021, for the first quarter of 2021. The employer received the statement of charges and did appeal the statement of charges for several people listed. Employer overlooked claimant and did not file an appeal to the statement of charges.

The next notice of the employer being charged for the claim was the third quarter statement of charges for 2021, which was mailed on October 15, 2021. Claimant filed its appeal on October 27, 2021. See Department Exhibit 1.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not file a timely protest to the notice of claim it received, and it does not have appeal rights to the notice of reimbursable benefit 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 provides, in relevant part:

Employer contributions and reimbursements.

7. Financing benefits paid to employees of governmental entities.

...

c. For purposes of this subsection, "governmental reimbursable employer" means an employer which makes payments to the department for the unemployment compensation fund in an amount equivalent to the regular and extended benefits paid, which are based on wages paid for services 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).

...

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.

(5) The provisions for collection of contributions under section 96.14 are applicable to reimbursements for benefits paid in lieu of contributions.

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.

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 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 mailed. The employer filed its first protest after the deadline. Employer did not receive the initial notice of claim via SIDES due to Agency delay in updating contact information. However, employer's first notice to protest the claim was through the first quarter of 2021 statement of charges, dated April 15, 2021, Effective April 15, 2021, employer had a reasonable opportunity to respond to the notice of claim, but did not do so.

The employer has not established that the delay after April 15, 2021 was due was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 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).

With regard to appeals from the notice of reimbursable benefits charges, 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 a contributory 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 following receipt of a statement of charges. While Iowa Code sections 96.7(7) and (8) which address reimbursable employers do not specifically state the reimbursable employers have appeal rights following the notice of reimbursable charges if they did not receive prior notice of the claim, Iowa Admin Code r. 871-26.4(4) allows for such an appeal.

In summary, employer received prior notice of claim through the statement of charges for the first quarter of 2021, and had a reasonable opportunity to respond to it, but failed to do so in a timely manner. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to claimant's eligibility for benefits or authority to remand the case for a fact-finding interview. Iowa Code § 96.6(2). The charges will remain in effect and claimant is allowed benefits.

DECISION:

The October 15, 2021, notice of reimbursable benefit charges for the third quarter of 2021 is affirmed. The employer did not timely protest the claimant's claim for benefits and the charges to the account are correct.



Jennifer L. Beckman
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January 20, 2022
Decision Dated and Mailed

jlb/rs