

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

RENEL BARJOLO

Claimant

APPEAL 23A-UI-05237-LJ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 10/30/22

Claimant: Respondent (1-R)

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 May 18, 2023, employer Advance Services Inc. filed an appeal from the statement of charges dated May 9, 2023 (reference 08) for the first quarter of 2023. A hearing was scheduled for 8:00 a.m. on Tuesday, June 13, 2023, pursuant to due notice. No hearing was held, as there was sufficient evidence in the appeal letter and administrative record to resolve the matter without testimony.

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: Iowa Workforce Development ("IWD") sent the notice of claim to the employer through the online SIDES on November 1, 2022. The employer submitted its response to that notice of claim through the same online system on November 14, 2022.

Next, IWD issued the February 9, 2023 statement of charges (reference 04) reflecting charges on the employer's account for the fourth quarter of 2022. When the employer received that document, it learned for the first time that it had been charged for the claimant's benefits. The employer appealed that statement of charges on February 14, 2023. After an appeal hearing, an administrative law judge remanded the matter to the Benefits Bureau to hold a fact-finding interview and issue a determination as to claimant's eligibility for benefits. See 23A-UI-01536-AR-T.

Following the remand, IWD issued an unemployment insurance decision dated March 17, 2023 (reference 05) finding the claimant was not eligible for benefits after the separation from employment. The claimant has not appealed that decision. After that decision was issued, IWD issued the May 9, 2023 statement of charges (reference 08) for the first quarter of 2023. The employer filed an appeal of that statement of charges on May 18, 2023.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge determines the employer has not appropriately filed an appeal of the statement of charges. However, to ensure a fair and just outcome, the employer's appeal is found both timely and appropriate.

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.

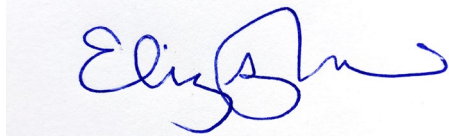
(Emphasis added.) As pointed out in emphasis above, an employer may only appeal a claimant's eligibility for benefits through the quarterly statement of charges when it has not previously received notice of the filing of a valid claim for benefits. In this case, the employer received several notices of claimant's claim, through the SIDES notice of claim, the fourth quarter statement of charges, and the reference 05 unemployment insurance decision.

However, the problem in this situation is that the reference 05 decision issued regarding claimant's separation denied unemployment insurance benefits. If the employer were to attempt to appeal this decision to fight the charges on its account, this appeal would either not be docketed or would be dismissed as an appeal of a favorable decision. The only available remedy the employer has at this point is to appeal the most recent statement of charges from the first quarter of 2023 and have the matter remanded to ensure their account is credited to reflect that the charges have been reversed, now that the claimant has been denied benefits.

DECISION:

The May 9, 2023 (reference 08) statement of charges for the first quarter of 2023 is affirmed pending the outcome of the remanded issue.

REMAND: This matter is remanded to the Tax Bureau of Iowa Workforce Development to credit the employer's account to reflect that the charges for claimant Renel Barjolo's benefits have been reversed, now that the claimant has been denied benefits based on the separation, provided such credit has not already been placed on the account.



Elizabeth A. Johnson
Administrative Law Judge

June 14, 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
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.