

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

KELLY L VOSS

Claimant

APPEAL 23A-UI-07881-DZ-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

LOVE INC OF THE CEDAR VALLEY

Employer

OC: 02/12/23

Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest

Iowa Code § 96.7(8)B(4) – Appeal from the Notice of Reimbursable Benefit Charges

STATEMENT OF THE CASE:

Love Inc of the Cedar Valley, the employer/appellant,¹ appealed the Iowa Workforce Development (IWD) July 15, 2023 notice of reimbursable benefit charges for the Second Quarter of 2023 that listed charges of \$4,002.10 to the employer's account for UI benefits IWD paid to Ms. Voss. The Iowa Department of Inspections, Appeals and Licensing, UI Appeals Bureau mailed a notice of hearing to the employer, Ms. Voss and IWD for a telephone hearing scheduled for August 30, 2023.

The undersigned administrative law judge held a telephone hearing on August 30, 2023. The employer participated through Luann Lasher-Gregg, finance coordinator and Brandon Pedersen, board president. Ms. Voss did not participate in the hearing. IWD did not participate in the hearing. The undersigned took official notice of the administrative record and admitted Employer's Exhibit 1 as evidence.

ISSUE:

Did the employer file its protest on time?

Did the employer file its appeal from the notice on time?

FINDINGS OF FACT:

Having reviewed the evidence in the record, the undersigned finds: Ms. Voss filed an initial UI claim effective February 12, 2023. IWD mailed a notice of claim to one of the employer's old addresses on February 15, 2023. The notice of claim contains a warning that the employer's protest response is due ten days from the notice date and gave a due date of February 27, 2023.

The employer received the notice on February 28 when an employee brought it from the employer's old address to the employer's current address. The old address is the current address of a church. The employee who brought the notice to the employer attends that church.

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

The employer completed the notice, signed it, and sent it back to IWD via fax the same day. The employer intended to protest Ms. Voss' UI claim based on her quitting in May 2022.

Also on February 28, the employer's accountant sent an email to an IWD tax auditor informing IWD that the employer received the notice on February 28, and the address listed on the notice is an old address of the employer. The accountant also informed IWD that the address listed on the notice is not listed on the employer's online account with IWD. The next day, the IWD tax auditor responded to the employer that the employer's protest was not too late and that the auditor would work on correcting the employer's address.

The following day, March 2, IWD issued a reference 01 UI decision finding Ms. Voss eligible for REGULAR (state) UI benefits because IWD concluded the employer did not file its protest of Ms. Voss' UI claim on time. IWD mailed the decision to the employer at the same old address it had sent the notice of claim. The appeal deadline in this decision was Sunday, March 12. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline was extended to Monday, March 13.

On March 8, the IWD tax auditor informed the employer that IWD records showed the employer's original address was established in 2010 and the employer had updated its address in 2012, 2015, and again in 2023. But for some reason the address IWD used to mail claims to the employer was not updated in the IWD system. The tax auditor informed the employer that the employer's address was updated as of March 8.

The employer received the March 2 UI decision on March 14 when an employee brought it from the employer's old address to the employer's current address. The employer appealed the decision on April 21. The Administrative Law Judge Decision in Appeal 23A-UI-04159-DG-T affirmed the decision because the employer did not file its appeal on time. This meant Ms. Voss was still eligible for UI benefits and the employer's account was still subject to charge. The employer appealed the Administrative Law Judge Decision to the Employment Appeal Board (EAB) on August 14, 2023. This appeal is pending.

On July 15, IWD mailed the notice of reimbursable benefit charges to the employer. The appeal deadline in the notice was Sunday, July 30. If the appeal deadline falls on a Saturday, Sunday, or legal holiday, the appeal period is extended to the next working day. So, the appeal deadline was extended to Monday, July 31. The employer received the July 15 notice and filed an appeal via United States Postal Service mail postmarked on July 28.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the undersigned concludes the employer has not met the conditions for appealing the notice of reimbursable 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 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 96.6(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.

The Administrative Law Judge Decision in Appeal 23A-UI-04159-DG-T already dealt with the issue of the timeliness of the employer's protest. As such, the undersigned lacks jurisdiction (authority) to decide whether Ms. Voss is eligible for UI benefits or whether the employer's account should be charged.

Iowa Code section 96.7 further provides, in relevant part:

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

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

amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, within thirty days after the mailing of the notification, the nonprofit organization appeals 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.

(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.

The employer is allowed to appeal to determine Ms. Voss' eligibility to receive UI benefits only if IWD did not previously notify the employer of her UI claim via the notice of claim. In this case, IWD mailed Ms. Voss' notice of claim to the employer and gave the employer an opportunity to respond. The employer did do so and continues to exercise its rights through its appeal to the EAB. The employer has not met the conditions for appealing the statement of charges.

DECISION:

The July 15, 2023 notice of reimbursable benefit charges for the Second Quarter of 2023 is **AFFIRMED**. The employer did not protest the notice of claim on time and has not met the conditions for appealing the statement of charges.



Daniel Zeno
Administrative Law Judge

August 31, 2023
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
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.