

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

ADRIAN E SORIA
Claimant

APPEAL 24A-UI-04861-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

HUTCHINSON SNOW REMOVAL LLC
Employer

**OC: 11/12/23
Claimant: Respondent (1)**

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, 2024, the employer, Hutchinson Snow Removal LLC, filed an appeal from the statement of charges dated May 9, 2024, which listed benefit charge information for the first quarter of 2024. Pursuant to due notice, a telephone hearing was held on June 6, 2024. The claimant, Adrian Soria, did not participate. The employer participated through Owner Amy Hutchinson. The administrative law judge took official notice of the claimant's unemployment insurance benefits records including the notice of claim and the employer's response to the notice of claim.

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: On November 12, 2023, the claimant filed an initial claim for unemployment insurance benefits. Iowa Workforce Development (IWD) mailed a notice of claim to the employer's address of record on November 14, 2023. The deadline to protest the notice of claim was listed as November 27, 2023. The protest document states the following:

“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 day.”

The employer received the notice and mailed a response to IWD on or before November 27, 2023. The employer left the "Employer Statement of Protest" section blank, but did provide remarks concerning the total wages the claimant earned while working for the employer. The employer certified that the information was correct. Because the employer did not provide a basis for protesting the claim, IWD stamped the response "NO PROTEST." On May 9, 2024, a statement of charges was mailed to the employer for the first quarter of 2024 reflecting that the employer had been charged \$33.25 for benefits paid to the claimant. The employer filed its appeal of that statement of charges on May 18, 2024.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did file a timely response to the notice of claim, however, it did not timely protest the claimant receiving benefits.

Iowa Code section 96.6(2) provides, in pertinent part:

Filing – determination – appeal.

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:

Employer contribution and reimbursements.

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.

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.

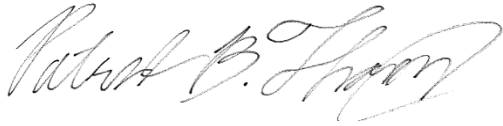
Iowa Code section 96.7(2)a(6) provides that an employer who did not receive a notice of claim may file an appeal to determine the claimant's eligibility to receive UI benefits. However, if the employer received notice of the claim and did not protest the claim, the employer cannot appeal the claimant's eligibility to receive UI benefits based on the employer receiving the statement of charges.

In this case, the employer received the notice of claim and submitted a timely response. However, the employer did not select any basis under which the claimant should be disqualified or provide any indication that the employer was protesting the claim. The employer then signed the form certifying that the information was correct. Under these circumstances, the administrative law judge finds the employer did not properly protest the claim, and thus, did not protest the claim in a timely manner.

The employer appealed the statement of charges for the first quarter of 2024 on May 18, 2024, which is before the June 10 deadline. As such, the employer appealed the statement on time. However, an employer is only allowed to appeal to the department for a hearing to determine the eligibility of an individual to receive benefits if they were not previously notified pursuant to Iowa Code section 96.6(2) of the notice of claim. In this case, the employer was mailed a notice of claim and given an opportunity to protest the claimant's eligibility for benefits, which it failed to do. As such, the conditions for appealing the statement of charges under Iowa Code section 96.7(2)a(6) have not been met.

DECISION:

The May 9, 2024, statement of charges for the first quarter of 2024 is affirmed. The employer did not timely protest the notice of claim. The employer has not met the conditions for appealing the statement of charges under Iowa Code section 96.7(2)a(6).



Patrick B. Thomas
Administrative Law Judge

June 10, 2024
Decision Dated and Mailed

pbt/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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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 adquiera 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.