

days following the quarterly statement of charges:

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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 Code §96.7(2)(a)(6)(emphasis added). What this means is that if an Employer does not receive notice of a claims representative decision concerning an individual's claim, and if that individual is paid benefits during a quarter, and if an employer wishes to challenge that payment, then the employer must appeal within 30 days of the mailing of the statement of charges. But surely this appeal duty is only triggered if the statement of charges reflects the payment of benefits which the Employer wishes to challenge. Here the Employer did not challenge the receipt of benefits prior to the Claimant's retirement. Thus if the statement of charges showed only benefits paid prior to the retirement date then, of course, the Employer would have had no reason to appeal the statement of charges. This reveals two flaws in the record.

First, we do not know what the statement of charges revealed. Did it show payment for benefits received in March (following retirement)? We need to know this since if it did not then the Employer's deadline cannot have started yet. Second, we need to know whether the Claimant was receiving retirement benefits in March. If the Claimant did receive unemployment benefits in March, then notice of this payment would trigger a duty to appeal the decision about the pension only if the Claimant was also receiving pension benefits in March. If the Claimant received unemployment benefits in a given week, but not pension benefits covering that week then how was the Employer to know that the Claimant was arguing that he could receive both without a setoff? We are aware that the Claimant retired effective March 1. A delay of a month or more in actual pension benefit payout, however, is not unheard of in pension plans. In sum, then, we need to know what the statement of charges showed, and when the Claimant commenced receiving pension benefits.

Since the record of the hearing before the administrative law judge is incomplete, the Employment Appeal Board cannot make a reasoned decision based on the facts presented. As the Iowa Court of Appeals noted in Baker v. Employment Appeal Board, 551 N.W. 2d 646 (Iowa App. 1996), the administrative law judge has a heightened duty to develop the record from available evidence and testimony given the administrative law judge's expertise. Since the Employment Appeal Board is unable to adequately make a decision based on the record now before it, this matter must be remanded for a new hearing in order that evidence may be obtained from the parties.

In conducting the new hearing the Administrative Law Judge and the parties should address what the Employer could have known from the statement of charges sent to it. Did that statement show the Claimant collecting unemployment benefits, without setoff, for a week during which the Claimant was also collecting

pension benefits? If so, then the statement of charges commenced the running of the appeal period set out in Iowa Code §96.7(2)(a)(6). If not, then the issue must proceed to just when a statement was mailed to the Employer notifying it of this dual receipt of benefits. For example, if the first notice was the next statement of charges sent on August 8, 2008 then that date would trigger the 30-day filing period set out in the Code.

DECISION: The decision of the administrative law judge dated September 9, 2008 is not vacated at this time. This matter is remanded to an administrative law judge in the Workforce Development Center, Appeals Section to adduce additional evidence consistent with our decision. The administrative law judge shall conduct a new hearing following due notice. After the hearing, the administrative law judge shall issue a decision that provides the parties appeal rights.

Elizabeth L. Seiser

Monique F. Kuester

RRA/ss

DISSENTING OPINION OF JOHN A. PENO:

I respectfully dissent from the majority decision of the Employment Appeal Board; I would affirm the decision of the administrative law judge in its entirety.

John A. Peno

RRA/ss