

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

VILMA S HERNANDEZ DE RAMIREZ
Claimant

HERITAGE GROUP LLC
Employer

APPEAL 21A-UI-02982-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 08/09/20
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 February 12, 2021, Heritage Group, LLC (employer) filed an appeal from the statement of charges dated February 9, 2021, reference 01, for the fourth quarter of 2020. A hearing was held on June 14, 2021, pursuant to due notice. Vilma S. Hernandez De Ramirez (claimant) did not respond to the hearing notice and did not participate. The employer participated through Millie Fiebelkorn, Director of HR, and Nichole Binge, VP of Finance. The Department's Exhibits D1 through D4 were received. The administrative law judge took official notice of the administrative record, specifically the claimant's wage and claim histories.

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: The claimant filed her claim for benefits effective August 9, 2020. The notice of claim was mailed to the employer's address of record on August 17. (Exhibit D1) The employer did not receive the notice of claim. The employer received a statement of charges dated November 9, for the third quarter of 2020. The statement included a charge for benefits paid to the claimant beginning August 9. (Exhibit D2) The employer did not appeal that statement of charges. On February 9, 2021, a statement of charges was mailed to the employer for the fourth quarter of 2020. The employer filed its appeal of that statement of charges on February 12.

The claimant voluntarily separated from employment with this employer on August 14, 2020, and filed her claim for benefits the same week. The claimant had two employers during her base period. The claimant filed weekly claims from August 9 through November 7, and did not

report any wages earned during that time. However, the administrative record shows the claimant was paid wages by E.L.G., LLC (526721) in the third and fourth quarters of 2020. Whether the claimant was able to and available for work and whether she failed to report wages earned while claiming benefits has not yet been investigated or adjudicated by the Benefits or Integrity Bureaus.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not timely file its appeal to the statement of 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(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.

The employer failed to timely appeal the claimant's receipt of benefits upon receiving notice. The employer received a statement of charges mailed November 9, 2020, showing that its account was being charged for benefits. It did not appeal at that time requesting a hearing to determine the claimant's eligibility. The employer filed its protest and appeal on February 9, 2021, which was not within 30 days of the first notification it had the claimant was receiving benefits chargeable to its account. The employer's protest and appeal are untimely, and a decision will not be issued on the claimant's eligibility for benefits based on the separation from employment.

Regardless of the timeliness the of employer's protest, the claimant has the burden to show she is able to and available for work and properly report any wages earned while filing for benefits. The information in the record indicates she voluntarily left employment with one of her two employers the same week she started filing for benefits and the other employer paid her wages during the same quarters in which she received benefits, but she did not report any wages earned. The issues of whether the claimant was able to and available for work, and whether she failed to report wages earned while claiming benefits are remanded to the Benefits or Integrity Bureau for review and processing.

DECISION:

The February 9, 2021, reference 01, statement of charges for the fourth quarter of 2020 is affirmed. The employer did not timely file an appeal from the first notification it had that the claimant was receiving benefits chargeable to its account. As a result, the claimant's eligibility for benefits based on her separation from this employer will not be addressed.

REMAND:

The issues of whether the claimant was able to and available for work and whether she failed to report wages earned while claiming benefits, as delineated above, are remanded to the Benefits or Integrity Bureau for review and processing.

A handwritten signature in blue ink that reads "Stephanie R Callahan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Stephanie R. Callahan
Administrative Law Judge

June 28, 2021
Decision Dated and Mailed

src/scn