

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

BRANDI J ECKES

Claimant

APPEAL 20R-UI-04017-JC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SHEAS LEARNING DAYS CHILD DEVELOP

Employer

OC: 01/26/20

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:

Employer/appellant filed an appeal from the May 8, 2020, Statement of Charges for the first quarter of 2020 that charged employer for claimant's unemployment insurance benefits. Notices of hearing were mailed to the parties' last known addresses of record for a telephone hearing scheduled for June 1, 2020, at 9:00 a.m. The claimant did not respond to the notice of hearing to furnish a phone number with the Appeals Bureau and did not participate in the hearing. The employer participated through Chanda Long, owner/operator.

The administrative law judge took official notice of the administrative records including the fact-finding documents. Department Exhibits D-1 and D-2 were admitted. The administrative law judge held the record open to allow the employer to submit additional documentation. No additional documentation was received from the employer. Based on the evidence, the arguments presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

NOTE TO EMPLOYER: To become a SIDES E-Response participant, you may send an email to iwd-sidesinfo@iwd.iowa.gov. To learn more about SIDES, visit <http://info.uisides.org>.

ISSUES:

Is the employer's protest timely?

Did the employer timely appeal the notice of charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Claimant filed a claim for unemployment insurance benefits with an effective date of January 26, 2020.

On January 28, 2020, Iowa Workforce Development (IWD) mailed a notice of claim to employer's last address of record. The notice of claim contained a warning that a notice of protest was due on February 7, 2020. Ms. Long filled out the notice of claim and dated it on February 4, 2020. She did not fax the notice of protest to IWD. She thought it was faxed by an

employee on the same day. She does not know which of her two employees faxed it, when it was faxed, or have any proof of submission. IWD has no record of receipt of a notice of protest (Department Exhibit D-1).

On May 8, 2020, IWD mailed a statement of charges to employer for the first quarter of 2020. The employer filed its appeal of that statement of charges on May 14, 2020 (Department Exhibit D-2).

REASONING AND CONCLUSIONS OF LAW:

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.

In this case, the administrative law judge concludes the employer did receive the notice of claim.

Iowa Admin. Code r. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

a. The employing unit which receives a Form 65-5317, Notice of Claim, or Form 68-0221, Request for Wage and Separation Information, must, within ten days of the date of the notice or request, submit to the department wage or separation information that affects the individual's rights to benefits, including any facts which disclose that the individual separated from employment voluntarily and without good cause attributable to the employer or was discharged for misconduct in connection with employment.

b. The employing unit may protest the payment of benefits if the protest is postmarked within ten days of the date of the notice of the filing of an initial claim. In the event that the tenth day falls on a Saturday, Sunday or holiday, the protest period is extended to

the next working day of the department. If the employing unit has filed a timely report of facts that might adversely affect the individual's benefit rights, the report shall be considered as a protest to the payment of benefits.

c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.

d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.

(1) The Notice of Separation, Form 60-0154, must be postmarked or received before or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time.

Iowa Admin. Code r. 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

24.35(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 division 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.

When a protest is received, the rules require that Workforce Development mail to the parties notice of a fact finding conference, that such a conference be held, and then that a determination be made regarding the protest. Iowa Admin. Code r. 871 - 24.9. Regular proceeding by the agency would have meant that the protest would be retained, a protest would be docketed, a fact finding interview would be scheduled and held, and a decision would be issued. Had a protest been received prior to May 8, 2020 (the mailing of the statement of charges), the regular process should have been triggered, but it was not. "The proceedings of

all officers and courts of limited and inferior jurisdiction within the state shall be presumed regular". Iowa Code §622.56; accord *City Of Janesville v. McCartney*, 426 N.W.2d 785 (Iowa 1982). Thus, there is a presumption, from Workforce Development having no record of a protest prior to May 13, 2020 (the employer's appeal to the statement of charges), that no protest was received by Workforce. This is not an absolute presumption, but is instead a presumption that may be overcome with sufficiently probative evidence.

The administrative law judge concludes that the employer simply did not supply evidence sufficient to overcome the presumption. The employer had a reasonable amount of time to file a protest. The employer did not provide any proof or evidence in support that the notice of claim protest was timely submitted to IWD. The employer witness testified that the protest was sent by fax on February 4, 2020, but could not produce any confirmation, date, or even the person who faxed the notice to IWD.

The employer is not helped by the fact that after it supposedly sent in the fax on February 4, 2020, it did nothing for three months. Had a protest been sent, one might expect a call from Workforce Development before three months were up. The notice of claim says as much. (See Ex. D-1). The testimony of the witness, and in the absence of fax does not convince the administrative law judge that a protest was indeed faxed at that time. Weighing the evidence carefully, the administrative law judge concludes that the protest was not timely filed because it was not in fact received by Workforce Development on February 4, 2020.

The employer received prior notice of the claim and had a reasonable opportunity to respond to it, but did not do so. Therefore, employer cannot appeal the May 8, 2020 statement of charges now because appeals of charges are only allowed in situations where employer did not have prior notice of the claim. (See highlighted section of the law above) Therefore the May 8, 2020, Statement of Charges for the first quarter of 2020 is affirmed. Benefits are allowed and the charges stand.

DECISION:

The May 8, 2020, Statement of Charges for the first quarter of 2020 is affirmed. The employer failed to file a timely protest of the claim. Benefits are allowed and the charges stand.



Jennifer L. Beckman
Administrative Law Judge
Unemployment Insurance Appeals Bureau
Iowa Workforce Development
1000 East Grand Avenue
Des Moines, Iowa 50319-0209
Fax 515-478-3528

August 21, 2020
Decision Dated and Mailed

jlb/sam