

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

KEVIN D CHASE
Claimant

APPEAL NO. 19A-UI-09386-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

JAYGOGA LLC
Employer

OC: 10/28/18
Claimant: Respondent (1)

Iowa Code Section 96.6-2 - Timeliness of Protest
Iowa Code Section 96.7(2)(a)(6) – Appeal from Statement of Charges
Iowa Code Section 96.7(2)(b)(1) – Successor Liability for Benefits

STATEMENT OF THE CASE:

The employer filed a timely appeal from the Statement of Charges that Iowa Workforce Development mailed to the employer on November 8, 2019. After due notice was issued, a hearing was held by telephone conference call on December 19, 2019. Claimant Kevin Chase did not comply with the hearing notice instructions to register a telephone number for the hearing and did not participate. Jessica Alfrey, Sales Manager, represented the employer. Exhibit 1 was received into evidence. The administrative law judge took official notice of the following Agency administrative records: (1) the November 5, 2018 notice of claim/protest form that Iowa Workforce Development received from employer Airport Hotel Management Services, L.L.C. prior to the November 15, 2018 protest deadline, (2) the November 19, 2018, reference 01, decision that allowed benefits to the claimant provided he was otherwise eligible and that held the employer account of Airport Hotel Management Services, L.L.C. could be charged for benefits, based on the deputy's determination that the claimant was discharged on October 30, 2018 for no disqualifying reason, (3) the Full-Non Mandatory Successorship notice that Iowa Workforce Development mailed to Jaygoga, L.L.C. on August 21, 2019, and (4) the Statement of Charges that Iowa Workforce Development mailed to Jaygoga, L.L.C. on November 8, 2019.

ISSUES:

Whether the employer submitted a timely protest in response to the notice of claim.
Whether the employer's appeal from the quarterly statement of charges that was mailed to the employer on November 8, 2019 may be considered.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: Jaygoga, L.L.C. (employer account number 620954) owns and operates the Ramada hotel located near the Des Moines International Airport. Jaygoga is a successor employer to predecessor employer Airport Hotel Management Services, L.L.C. (employer account number 582797), which previously owned and operated the Ramada hotel located near the Des Moines International Airport. On November 5, 2018, Iowa Workforce Development mailed a notice of claim concerning the above claimant to the last known address of the predecessor employer, Airport Hotel

Management Services, L.L.C. The claimant was employed by Airport Hotel Management Services, but did not perform work for Jaygoga. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was November 15, 2019. The notice of claim set forth the claimant's weekly benefit amount, \$286.00, and the employer's maximum liability on the claim, \$7,979.52. Airport Hotel Management Services' filed timely protest/response to the notice of claim by the protest deadline. Based on the timely protest, Iowa Workforce Development held a fact-finding interview in which the employer participated. On November 19, 2018, Iowa Workforce Development mailed a copy of the November 19, 2018, reference 01, decision to the last-known address of Airport Hotel Management Services, Inc. The November 19, 2018, reference 01, decision allowed benefits to the claimant provided he was otherwise eligible and held the employer account of Airport Hotel Management Services, L.L.C. could be charged for benefits, based on the deputy's determination that the claimant was discharged on October 30, 2018 for no disqualifying reason. Airport Hotel Management Services did not appeal the decision and the decision became a final agency decision.

On August 21, 2019, Iowa Workforce Development mailed a Full Non-Mandatory Successorship notice to Jaygoga at its last-known address of record. Jaygoga received the notice in a timely manner. The notice stated as follows:

Decision: You are liable for unemployment insurance contributions (tax) effective July 1, 2019.

Explanation: You acquired all the business of AIRPORT HOTEL MANAGEMENT SERVICES, LLC, UI account # 00582797 effective 07/01/2019. All experience will transfer to your account. You are liable for any debt this employer may owe to Iowa Workforce Development.

Your rates are shown in the table. These rates are based on the experience of the former owner of the business. Future rates will be based on the combined experience. Experience includes taxable wages and benefit charges.

The Full Non-Mandatory Successorship notice further stated:

This decision will be final if you do not file an appeal within thirty days from the date on this notice. Your appeal must be in writing and mailed directly to the Unemployment Insurance Services Tax Bureau.

The Full Non-Mandatory Successorship notice set forth the applicable Iowa Code sections governing successorship. Jaygoga did not appeal the full successorship determination.

On November 8, 2019, Iowa Workforce Development mailed a State of Charges to Jaygoga that included charges for benefits Iowa Workforce Development had paid to the claimant during the calendar quarter that ended September 30, 2019.

On November 26, 2019, Jaygoga electronically filed an appeal from the statement of charges. Jaygoga stated the sole basis of its appeal as follows: "This person was never employed by us."

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.

Prior to the August 21, 2019 successorship determination, Iowa Workforce Development appropriately mailed a notice of claim to the predecessor employer, Airport Hotel Management Services, L.L.C. (employer account number 582797). The notice of claim set forth the claimant's weekly benefit amount and the employer's maximum liability on the claimant's claim for benefits. The predecessor employer provided a timely protest/response which led to a July 10, 2019 fact-finding interview. On July 11, 2019, Iowa Workforce Development mailed a copy of the July 11, 2019, reference 01, decision to the last-known address of Airport Hotel Management Services, Inc. The July 11, 2019, reference 01, decision allowed benefits to the claimant provided she was otherwise eligible and held the employer account of Airport Hotel Management Services, L.L.C. could be charged for benefits, based on the deputy's determination that the claimant was discharged on June 17, 2019 for no disqualifying reason. Airport Hotel Management Services did not appeal the decision and the decision became a final agency decision. Accordingly, the employer became subject to charges up to the maximum set forth on the notice of claim.

Iowa Code section 96.7(2)(b)(1) provides:

Employer contributions and reimbursements.

2. *Contribution rates based on benefit experience.*

b. (1) If an organization, trade, or business, or a clearly segregable and identifiable part of an organization, trade, or business, for which contributions have been paid is sold or transferred to a subsequent employing unit, or if one or more employing units have been reorganized or merged into a single employing unit, and the successor employer, having qualified as an employer as defined in section 96.19, subsection 16, paragraph "b", continues to operate the organization, trade, or business, the successor employer shall assume the position of the predecessor employer or employers with respect to the predecessors' payrolls, contributions, accounts, and contribution rates to the same extent as if no change had taken place in the ownership or control of the organization, trade, or business. However, the successor employer shall not assume the position of the predecessor employer or employers with respect to the predecessor employer's or employers' payrolls, contributions, accounts, and contribution rates which are attributable to that part of the organization, trade, or business transferred, unless the successor employer applies to the department within ninety days from the date of the partial transfer, and the succession is approved by the predecessor employer or employers and the department.

Iowa Administrative Code Rule 871-23.31(3) provides:

Future benefit charges based on wages paid by the predecessor prior to the acquisition or purchase date. The successor employer will receive future benefit charges based on the wage credits transferred to said successor's account for the six-quarter period immediately preceding the acquisition date plus any benefit charges based on wages attributable to the acquired portion prior to the six-quarter period on claims already filed on the date of the acquisition.

In the absence of a timely appeal from the August 21, 2019, Full Non-Mandatory Successorship determination and notice, the employer account of the successor employer, Jaygoga, L.L.C. (employer account number 620954), became liable for charges for benefits paid to this claimant, based on the wage credits that were transferred to Jaygoga's account as part of the transfer of the predecessor's "experience."

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.] The predecessor employer, Airport Hotel Management Services, L.L.C., received appropriate notice of the allowance of benefits pursuant to Iowa Code Section 96.6(2), protested the claim. The protest resulted in a decision that the claimant was eligible for benefits provided she met all other eligibility requirements and that the employer's account could be charged for benefits. Based on the successorship determination, the successor employer is bound by the determination that the claimant is eligible for benefits, provided she is otherwise eligible, and that the employer's account may be charged for benefits up to the maximum liability referenced on the notice of claim. Based on the prior notice and November 19, 2018, reference 01, final agency decision, Jaygoga's appeal from the quarterly Statement of Charges may not be further considered.

DECISION:

The quarterly statement of charges is affirmed. The predecessor employer received timely notice of the claim and protested the claim. The protest led to a final agency decision that the claimant was eligible for benefits provided he was otherwise eligible and that the employer's account could be charged for benefits up to the maximum set forth on the notice of claim. The employer account of successor employer, Jaygoga, L.L.C. is liable for benefits paid to the claimant. The employer account of Jaygoga, L.L.C. may be charged pursuant to the charges set forth on the notice of claim that was mailed on November 8, 2019.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn