

**IOWA DEPARTMENT OF INSPECTIONS AND APPEALS  
ADMINISTRATIVE HEARINGS DIVISION, UI APPEALS BUREAU**

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**GERARDO CORONEL**

Claimant

**APPEAL 23A-UI-05077-SN-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**PREMIER CONCRETE PUMPING LLC**

Employer

**OC: 01/30/22**

**Claimant: Respondent (4)**

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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 12, 2023, Premier Concrete Pumping LLC (employer) filed an appeal from the statement of charges dated March 31, 2023, reference 01, for the first quarter of 2023. A hearing was scheduled to be held on June 5, 2023, pursuant to due notice. Due to technical issues with the hearing control panel software, the administrative law judge postponed the hearing.

A new hearing was scheduled for June 23, 2023 at 10:00 a.m. Gerardo Coronel (claimant) participated. Spanish speaking interpretation by CTS Language Link was used to help the claimant participate in his own language. The employer participated through Owner Dorrie Warren. The Department's Exhibits D1 through D4 were received.

**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 notice of claim was mailed to the employer's address of record on February 14, 2022. The employer did not protest the claimant's receipt of benefits as he had been laid off work for the season. (Exhibit D1) The claimant's weekly benefit amount is \$531.00 for this claim.

The employer received a statement of charges dated May 9, 2022 for the first quarter of 2022. The statement included a charge for benefits paid to the claimant beginning January 30, 2022. The employer did not appeal that statement of charges because the claimant had accrued these on his seasonal lay off. (Exhibit D4)

The claimant permanently separated from the employer on June 13, 2022. The claimant quit to work for another employer, Freedom Concrete Pumping, around that date. The claimant filed an

additional claim on December 18, 2022. The employer did not protest this claim because it did not receive it. The claimant's wage records show he earned \$25,491.00 in the second quarter and third quarter of 2022.

On May 9, 2023, a statement of charges was mailed to the employer for the first quarter of 2023. The employer filed its appeal of that statement of charges on May 16, 2023. (Exhibit D2)

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons set forth below, I find the employer has timely appealed the statement of charges, and the claimant has requalified for benefits by earning ten times the weekly benefit amount in insured wages following the separation from this employer.

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.

As pointed out above, an employer may only appeal a claimant's eligibility for benefits through the quarterly statement of charges when it has not previously received notice of the filing of a valid claim for benefits. In this case, the employer received and responded to the notice of claimant's unemployment insurance claim. Therefore, the employer may not appeal the quarterly statement of charges. While the appeal is timely, it is not appropriate.

However, the employer was charged for benefits when it should not have been, as the claimant has requalified for benefits by earning ten times the weekly benefit amount since separating from employment. The employer followed the rules set forth on the statement of charges it received by filing the appeal to the statement of charges within thirty days. The claimant has requalified for benefits since the separation from this employer by earning ten times the weekly benefit amount in insured wages following the separation. See Iowa Code §§ 96.5(1)g and 96.5(2)a. Accordingly, benefits are allowed and the account of the employer shall not be charged.

**Timeliness of Protest / Timeliness of Appeal of Statement of Charges**

The employer did not protest the claimant's initial notice of claim because it agreed that he was entitled to charges because he was on a temporary layoff. This is also the reason the employer did not appeal the statement of reimbursable charges dated May 9, 2022.

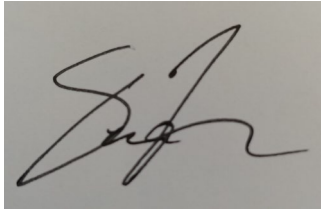
The employer did not receive a notice of claim for the additional claim the claimant made on December 18, 2022. The next statement of charges received by the employer was the one that was appealed. It was appealed within days of receipt. Therefore, the administrative law judge finds the employer's appeal timely.

**Claimant Earned Ten Times his Weekly Benefit Amount**

The claimant earned \$25,491.00 in the second quarter and third quarter of 2022. Ten times the claimant's weekly benefits amount on this claim is \$5,310.00. Therefore, the employer should be relieved of charges for continuing claims made after December 18, 2022 because the claimant earned more than ten times his weekly benefit amount prior to the claim made on December 18, 2022.

**DECISION:**

The March 31, 2023, reference 01, for the first quarter of 2023 is modified in favor of the appellant, which will appear as a credit to the employer's account on a future statement of charges. The employer has filed a timely appeal from that statement of charges. The claimant has requalified for benefits since the separation. Benefits are allowed, provided the claimant is otherwise eligible. The account of the employer (#306652-000) shall not be charged and a credit shall be issued on a future statement of charges.



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Sean M. Nelson  
Administrative Law Judge II  
Iowa Department of Inspections & Appeals  
Administrative Hearings Division – UI Appeals Bureau

June 29, 2023  
Decision Dated and Mailed

smn/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:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
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:

**Employment Appeal Board  
4th Floor – Lucas Building  
Des Moines, Iowa 50319  
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 adquiriera 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.