

**IN THE IOWA ADMINISTRATIVE HEARINGS DIVISION
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

JAVAN T WHITE

Claimant

APPEAL NO. 23A-UI-08155-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 08/28/22

Claimant: Respondent (2)

Iowa Code Section 96.6(2) - Timeliness of Protest

Iowa Code Section 96.7(2)(a)(6) – Appeal from Statement of Charges

STATEMENT OF THE CASE:

On August 23, 2023, the employer filed an appeal from the statement of charges that Iowa Workforce Development mailed to the employer on August 9, 2023. The statement of charges included a charge for benefits paid to this claimant during the quarter that ended June 30, 2023. After due notice was issued, a hearing was held on September 11, 2023. Javan White (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Steve Volle represented the employer. Exhibits 1, 2, 6, 7 and 8 were received into evidence. Exhibits 3, 4 and 5 were not relevant and were not admitted into evidence. The administrative law judge took official notice of the following agency administrative records: DBRO, WAGEA, NMRO, the August 30, 2022 notice of claim and protest, the August 9, 2023 statement of charges, and the reference 09 decision.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.

Whether there is good cause to deem the employer's late protest as timely.

Whether the employer filed a timely appeal from the Statement of Charges.

Whether the Statement of Charges is correct.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

Javan White (claimant) established an original claim for benefits that was effective August 28, 2022 and an "additional claim" that was effective April 9, 2023. Iowa Workforce Development set the weekly benefit amount at \$206.00. All benefits paid to the claimant in connection with the claim were paid during the second quarter of 2023. IWD paid \$2,266.00 in benefits to the claimant for 11 weeks between April 9, 2023 and June 24, 2023.

This employer is a base period employer for purposes of the benefit year that began for the claimant on August 28, 2022. The base period consists of second, third and fourth quarter of 2021 and the first quarter of 2022. The claimant's base period wages from this employer derive

exclusively from the first quarter of 2022. During that quarter, the employer paid the claimant \$3,791.25. One-third of that amount equals \$1,263.75.

This claimant performed additional work for this employer during the second and third quarters of 2022. During those respective quarters outside the base period, the employer paid \$6,925.00 and \$6,281.00 in wages. The claimant separated from this employer on August 31, 2022 and has not performed any work for this employer since then.

In connection with the original claim that was effective August 28, 2022, Iowa Workforce Development issued a notice of claim to this employer via SIDES on August 30, 2022. The notice of claim included a September 9, 2022 deadline for the employer's response. The employer received not SIDES notice of claim in a timely manner. On August 30, 2022, the employer submitted a protest via SIDES.

On September 16, 2022, IWD Benefits Bureau issued a reference 02 decision that disqualified the claimant for benefits and that relieved the employer's account of liability for benefits, based on deputy's conclusion the claimant voluntarily quit on August 31, 2022. In the absence of an appeal, the reference 02 decision became a final agency decision.

IWD did not issue a notice of claim to this employer in connection with the April 9, 2023 "additional claim" or at any other time since the notice of claim that was issued on August 30, 2022. Nor would one expect a new notice of claim in light of the September 16, 2022 (reference 02) disqualification decision and the claimant not returning to perform additional work for this employer.

On May 1, 2023, IWD Benefits Bureau issued a reference 09 decision that allowed benefits to the claimant in connection with the "additional claim," and that again held this employer's account would not be charged for benefits. The reference 09 decision was based, at least in part, on the deputy's determination the claimant had earned 10 times his weekly benefit amount from additional insured work after his August 31, 2022 separation from this employer. The reference 09 decision further stated:

EMPLOYER INFORMATION:

WAGE CREDITS EARNED DURING THE PERIOD FROM 4/1/21 UNTIL 8/31/22, WILL BE CHARGED TO THE UNEMPLOYMENT COMPENSATION FUND.

In the absence of an appeal the May 1, 2023 (reference 09) decision became a final agency decision.

On August 9, 2023, Iowa Workforce Development mailed a statement of charges to the employer regarding benefits paid during the quarter that ended June 30, 2023. Despite the earlier decision that relieved the employer of charges, the August 9, 2023 statement of charges included a \$1,263.75 to the employer's account for benefits paid to this claimant during the quarter that ended June 30, 2023. The employer received the statement of charges in a timely manner.

On August 23, 2023, the employer faxed an appeal from the statement of charges to the Unemployment Insurance Appeals Bureau. The Appeals Bureau received the appeal on August 23, 2023.

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.

Another portion of this same Code section dealing with timeliness of an appeal from a representative's decision states that such an appeal must be filed within ten days after notification of that decision was mailed. In addressing an issue of timeliness of an appeal under that portion of this Code section, the Iowa Supreme Court held that this statute prescribing the time for notice of appeal clearly limits the time to do so, and that compliance with the appeal notice provision is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the court to be controlling on this portion of that same Iowa Code section which deals with a time limit in which to file a protest after notification of the filing of the claim has been mailed.

Iowa Administrative Code Rule 871-24.8(2)(a) and (b) provide as follows:

(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 a 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.

Iowa Administrative Code Rule 871-24.35(1) provides:

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

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.

b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.

- c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 871-24.35(2) provides:

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

(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 department 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.

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.

Iowa Admin. Code rule 871-26.4(3) provides:

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.

The evidence in the record establishes an August 30, 2022 timely protest via SIDES in response to the August 30, 2022 SIDES notice of claim. Though the August 9, 2023 statement

of charges was not the employer's first notice of the claim, the employer filed a timely challenge to the statement of charges on August 23, 2023.

The evidence further establishes that IWD Tax Bureau erred when it included a \$1,263.75 charge in the August 9, 2023 statement of charges for benefits paid to this claimant during the quarter that ended June 30, 2023. Prior to the August 9, 2023 statement of charges, IWD Benefits Bureau had twice entered decisions that relieved this employer of liability for benefits paid to this claimant. The September 16, 2022 (reference 02) decision disqualified the claimant for benefits and relieved the employer's account of liability for benefits, based on the deputy's conclusion the claimant voluntarily quit on August 31, 2022 without good cause attributable to this employer. In the absence of an appeal, the reference 02 decision became a final agency decision. The May 1, 2023 (reference 09) 10-times requalification decision allowed benefits to the claimant in connection with the April 9, 2023 "additional claim," provided the claimant met all other eligibility requirements, but again held this employer's account would not be charged for benefits. In addition, the reference 09 decision held "WAGE CREDITS EARNED DURING THE PERIOD FROM 4/1/21 UNTIL 8/31/22, WILL BE CHARGED TO THE UNEMPLOYMENT COMPENSATION FUND." Unless appealed in a timely manner and reversed on appeal, a finding of fact or law, judgment, conclusion, or final order made pursuant to this section by an employee or representative of Iowa Workforce Development, administrative law judge, or the employment appeal board, is binding upon the parties in proceedings brought under this chapter. See Iowa Code section 96.6(3) and (4). Both the reference 02 and 09 decisions relieved the employer of charge and were final agency decisions. The \$1,263.75 charge to the employer's account for benefits paid to the claimant during the quarter that ended June 30, 2023 was in error and is REVERSED.

DECISION:

The employer filed a timely protest in response to the August 30, 2022 notice of claim and a timely appeal from the August 9, 2023 statement of charges. The \$1,263.75 charge to the employer's account for benefits paid to the claimant during the quarter that ended June 30, 2023 was in error and is REVERSED.

Note to claimant: this decision that relieves the employer of liability for charges does not disturb the May 1, 2023 (reference 09) 10-times requalification decision that allowed benefits in connection with the April 9, 2023 "additional claim," provided the claimant met all other eligibility requirements,



James E. Timberland
Administrative Law Judge

September 12, 2023
Decision Dated and Mailed

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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
4th 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>.

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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.