BEFORE THE EMPLOYMENT APPEAL BOARD Lucas State Office Building Fourth floor Des Moines, Iowa 50319

CHARLES E HALLIGAN	:	HEARING NUMBER: 14B-UI-06910
Claimant,	:	
and	:	EMPLOYMENT APPEAL BOARD
CALACCI CONSTRUCTION CO INC	:	DECISION

Employer.

ΝΟΤΙΟΕ

THIS DECISION BECOMES FINAL unless (1) a **request for a REHEARING** is filed with the Employment Appeal Board within **20 days** of the date of the Board's decision or, (2) a **PETITION TO DISTRICT COURT** IS FILED WITHIN **30 days** of the date of the Board's decision.

A REHEARING REQUEST shall state the specific grounds and relief sought. If the rehearing request is denied, a petition may be filed in **DISTRICT COURT** within **30 days** of the date of the denial.

SECTION: 96.5-2-A

DECISION

UNEMPLOYMENT BENEFITS ARE DENIED

The Claimant appealed this case to the Employment Appeal Board. Two members of the Employment Appeal Board reviewed the entire record. The Appeal Board finds the administrative law judge's decision is correct. The administrative law judge's Findings of Fact and Reasoning and Conclusions of Law are adopted by the Board as its own. The administrative law judge's decision is **AFFIRMED**.

We address the Claimant's argument that since he collected benefits in a prior benefit year, it must be that he was laid off. This is simply not a justified conclusion. An employer is given 10 days to protest an initial claim – each and every once-a-benefit-year initial claim. If the employer does not protest that initial claim then the employer may not protest the receipt of benefits on that initial claim. This does not bar the Employer from protesting in a *subsequent benefit year*. In a subsequent benefit, year the claimant must file a new claim with a new base period and will be given a new monetary determination. In such a subsequent benefit year claim a new notice of claim is sent to the base period employers. Then by law those employers have a new 10 day protest period. Iowa Code §96.6(2). The fact that they did not protest some other claim has no effect at all on their right to protest this second claim.

In the past we have emphasized that in cases of separation from employment, a base period employer who fails to protest the first benefit year, and who then protests in the second benefit year, may not cross benefit years to disqualify a claimant in the first benefit year. We have in those cases voided the overpayment for the first benefit year, and held "[i]n short, one claim per protest." *Popelka v. IWD*, 12A-UI-02137 (EAB

2012). But this simple principle, based on the plain meaning of the statute, also means that a *failure* to protest does cross benefit years to bar a protest of a newly filed subsequent initial claim. Finally, we cannot simply infer based on a failure to protest that it must be that the Claimant was laid off and that is why the Employer failed to protest. We base our decision on record evidence, not on speculation, and that evidence causes us today to adopt the Administrative Law Judge's decision.

Kim D. Schmett

Ashley R. Koopmans

A portion of the Claimant's appeal to the Employment Appeal Board consisted of additional evidence which was not contained in the administrative file and which was not submitted to the administrative law judge. While the appeal and additional evidence was reviewed, the Employment Appeal Board, in its discretion, finds that the admission of the additional evidence is not warranted in reaching today's decision.

Kim D. Schmett

Ashley R. Koopmans

RRA/fnv