

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALVA LEROY WHITEHILL
Claimant

CITY OF SHENANDOAH
Employer

APPEAL 21A-UI-04120-SC-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 11/29/20
Claimant: Respondent (1)

Iowa Code § 96.6(2) – Timeliness of Protest
Iowa Code § 96.7(8)B(4) – Application for Redetermination

STATEMENT OF THE CASE:

On January 20, 2021, City of Shenandoah (employer) filed an appeal from the notice of reimbursable benefit charges dated January 15, 2021, reference 01, which listed reimbursable benefit charge information for the fourth quarter of 2020. A telephone hearing was held on April 15, 2021, pursuant to due notice. Alva Leroy Whitehill (claimant) participated personally. The employer participated through Jessica Lambertson, Payroll and HR, and AJ Lyman, City Administrator. The department's Exhibits D1 through D3 were received.

ISSUES:

Is the employer's protest timely?
Did the employer timely appeal the notice of reimbursable charges?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant was temporarily laid off on or about November 25, 2020, and filed a claim for benefits effective November 29. On December 8, the notice of claim was provided to the employer in the SIDES system with an e-mail alert to the email address of record. The notice of claim contains a warning that the employer protest response is due ten days from the initial notice date and gave a response deadline of December 18.

The employer did not file a protest response to that notice of claim. The email address of record belonged to an employee who had left employment. However, the employer did not update its email address for SIDES and did not monitor the former employee's email account.

The next notice of the claimant's claim for benefits was the receipt of the notice of reimbursable benefit charges mailed January 15, 2021 for the fourth quarter of 2020. The employer filed its appeal of that notice on January 20.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes the employer did not file a timely protest to the notice of claim it received and it does not have appeal rights to the notice of reimbursable benefit charges.

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 provides, in relevant part:

Employer contributions and reimbursements.

7. Financing benefits paid to employees of governmental entities.

...

c. For purposes of this subsection, "governmental reimbursable employer" means an employer which makes payments to the department for the unemployment compensation fund in an amount equivalent to the regular and extended benefits paid, which are based on wages paid for services in the employ of the employer. Benefits paid to an eligible individual shall be charged against the base period employers in the inverse chronological order in which the employment of the individual occurred. However, the amount of benefits charged against an employer for a calendar quarter of the base period shall not exceed the amount of the individual's wage credits based upon employment with that employer during that quarter. At the end of each calendar quarter, the department shall bill each governmental reimbursable employer for benefits paid during that quarter. Payments by a governmental reimbursable employer shall be made in accordance with subsection 8, paragraph "b", subparagraphs (2) through (5).

...

8. Financing benefits paid to employees of nonprofit organizations.

...

b. Reimbursements for benefits paid in lieu of contributions shall be made in accordance with the following:

...

(4) The amount due specified in a bill from the department is conclusive unless, not later than fifteen days following the date the bill was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an application for redetermination with the department setting forth the grounds for the application. The department shall promptly review the

amount due specified in the bill and shall issue a redetermination. The redetermination is conclusive on the nonprofit organization unless, not later than thirty days after the redetermination was mailed or otherwise delivered to the last known address of the nonprofit organization, the nonprofit organization files an appeal to the district court pursuant to subsection 5.

(5) The provisions for collection of contributions under section 96.14 are applicable to reimbursements for benefits paid in lieu of contributions.

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.

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 that court in that decision 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. The employer was notified of the claim through SIDES, and it filed its first protest after the December 18 deadline. The employer's decision not to update its contact information with IWD or monitor the prior employee's email address were business decisions. The employer has not established that the delay was due to any error by or misinformation from the agency or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). As the employer has failed to timely protest pursuant to Iowa Code § 96.6(2), the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment. See, *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979); *Franklin v. Iowa Dep't of Job Serv.*, 277 N.W.2d 877 (Iowa 1979) and *Pepsi-Cola Bottling Co. v. Emp't Appeal Bd.*, 465 N.W.2d 674 (Iowa Ct. App. 1990).

With regard to appeals from the notice of reimbursable benefits charges, Iowa Code section 96.7(2)a(6), which applies to contributory employers, provides guidance in the situation here, which deals with a reimbursable employer. It states that a contributory employer who did not receive notice of the claim may appeal to the department for a hearing to determine the eligibility of an individual to receive benefits following receipt of a statement of charges. While Iowa Code sections 96.7(7) and (8) which address reimbursable employers do not specifically state the reimbursable employers have appeal rights following the notice of reimbursable charges if they did not receive prior notice of the claim, Iowa Admin Code r. 871-26.4(4) allows for such an appeal.

When an employer receives a notice of claim and fails to protest in a timely manner, they do not have appeal rights to the notice of reimbursable benefit charges. In this case, the employer was sent the notice of claim and no longer has appeal rights to the notice of reimbursable benefit charges. The administrative law judge lacks jurisdiction to modify the charges to the employer's account.

DECISION:

The January 15, 2021, reference 01, notice of reimbursable benefit charges for the fourth quarter of 2020 is affirmed. The employer did not timely protest the claimant's claim for benefits and the charges to the account are correct.



Stephanie R. Callahan
Administrative Law Judge

April 20, 2021
Decision Dated and Mailed

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