

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

LUIS A SICAN
Claimant

APPEAL 18A-UI-11343-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OTTUMWA COMMUNITY SCHOOL
DISTRICT**
Employer

OC: 07/22/18
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:

The employer filed an appeal from the notice of reimbursable benefit charges dated November 9, 2018, which listed reimbursable benefit charge information for the third quarter of 2018. Due notice was issued and a hearing was held on December 13, 2018. Claimant participated. Employer participated through director of human resources Teri King and administrative assistant to director of human resources Karla Bray. The administrative law judge took official notice of the administrative record, including when the notice of claim was mailed and the information stored for employer in the SIDES system.

ISSUES:

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

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: Employer signed up to receive electronic notice of claims through the SIDES system on March 6, 2017. Angie Stevens was the director of human resources for employer beginning July 2017. Employer provided Iowa Workforce Development with Stevens' email address "angie.stevens@ottumwaschools.com" as the exclusive contact to receive notices of claims.

On November 20, 2017, Stevens resigned. After Stevens resigned, employer did not contact Iowa Workforce Development to update the email address for electronic communication through the SIDES system. Employer preserved and had access to her email account. Employer did not take any action to have Stevens' emails forwarded to another email account after her departure. Employer did not periodically check the email account for important information. Employer only examined the email account as necessary when specific issues arose.

The director of human resources position was vacant until Patricia Heinz began in the position on July 1, 2018. Heinz did not take any action to update employer's information with Iowa

Workforce Development during her employment or otherwise protest claimant's claim for unemployment insurance benefits. There is no evidence Heinz reviewed Stevens' email account during her employment.

Claimant filed a claim for unemployment insurance benefits with an effective date of July 22, 2018. Iowa Workforce Development sent employer an email alert of a notice of claim in the SIDES system on July 26, 2018. The email alert was sent to Stevens' email address. Employer did not read the email and did not respond to the notice of claim.

Heinz resigned on October 12, 2018.

On October 15, 2018, Teri King became the director of human resources for employer. King was not aware that employer was signed up to receive notices of claim electronically.

King's first notice that claimant filed a claim was when employer received the notice of reimbursable benefit charges mailed on November 9, 2018. The notice of reimbursable benefit charges included charges for claimant's unemployment insurance benefits.

King contacted Iowa Workforce Development immediately and learned employer was signed up to receive notices of claim electronically through the SIDES system and that the email address identified for employer was angie.stevens@ottumwaschools.com. King updated the email address.

On November 20, 2018, King appealed the notice of reimbursable benefit charges. Employer wishes to protest the claim.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.7(8)B(4) provides:

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.

An 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. Iowa Code section 96.7(2)a(6).

In this case, the employer filed the appeal to the notice of reimbursable benefit charges within the 15-day deadline. The only issue is whether employer received notice of the claim.

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. Iowa Dep't of Job Serv.*, 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.

By analogy to appeals from initial determinations, the ten day period for filing a protest is jurisdictional. *Messina v. Iowa Dept. of Job Service*, 341 N.W.2d 52, 55 (Iowa 1983); *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373 (Iowa 1979). The only basis for changing the ten-day period would be where notice to the protesting party was constitutionally invalid. *Beardslee v. Iowa Dep't of Job Serv.*, 276 N.W.2d 373, 377 (Iowa 1979). The question in such cases becomes whether the protester was deprived of a reasonable opportunity to assert the protest in a timely manner. *Hendren v. Iowa Employment Sec. Commission*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Employment Sec. Commission*, 212 N.W.2d 471 (Iowa 1973).

The administrative law judge concludes that the employer did receive notice of the claim at the address it specified when it signed up to receive electronic notice of claims via the SIDES system and therefore it was not deprived of a reasonable opportunity to assert the protest in a timely fashion. Although the email address to which the notice of claim was sent is affiliated with a former employee, the email account ultimately belongs to employer. A director of human resources is considered a "high level" employee in basically every organization. A sensible employer would realize the high likelihood of important emails being sent to its director of human resources, even after her departure. In this situation, a reasonable employer would have taken steps to forward the emails sent to Stevens' email account to another address that was being monitored or, at very least, checked the account periodically for important information. Employer had the opportunity to respond to the notices of claim sent to the email account during the last calendar year since Stevens' departure. It chose not to take the steps that would have allowed it to do so. That was a business decision.

In summary, employer received prior notice of claim and had a reasonable opportunity to respond to it, but failed to do so in a timely manner. Therefore, the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the claimant's separation from employment or authority to remand the case for a fact-finding interview. Iowa Code § 96.6(2). The charges will remain in effect and claimant is allowed benefits.

DECISION:

The November 9, 2018, notice of reimbursable benefit charges is affirmed. The employer did not file a timely protest to the notice of claim. The charges shall remain in full force and effect. Benefits are allowed.

Christine A. Louis
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Decision Dated and Mailed

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