

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

CHRISTIAN A GAJDA
Claimant

SAGEMARK LTD
Employer

APPEAL 23A-UI-05091-SN-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/01/23
Claimant: Respondent (4)**

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 16, 2023, Sagemark LTD (employer) filed an appeal from the statement of charges dated May 9, 2023, reference 04, for the first quarter of 2023. A hearing was held on June 5, 2023, pursuant to due notice. Christian A. Gajda (claimant) did not respond to the hearing notice and did not participate. The employer participated through Director of Human Resources McKenzie Roessler. The Department's Exhibits D1, D2, and D3 were received. The administrative law judge took official notice of the administrative record.

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 claimant filed an initial claim for benefits on January 1, 2023. His weekly benefit amount on that claim was \$190.00.¹ The notice of claim was mailed to the employer's address of record on January 6, 2023. The due date on the notice of claim was January 17, 2023. The employer filed its protest by facsimile on January 10, 2023. The employer did not receive a report stating an error in the transmission of the protest from its facsimile machine. (Exhibit D1) The employer's protest informed Iowa Workforce Development Department its allegation the claimant separated on January 22, 2022.

Over the following three business quarters, the claimant earned more than \$1,900.00.

On January 11, 2023, the claimant received two favorable opinions granting benefits, but also relieving these employer's for charges because the claimant had earned more than ten times after separations from their companies. These decisions stated that the unemployment

¹ The claimant lacked earnings to have a weekly benefit amount in preceding claim years.

insurance fund would be charged for the benefits instead. On January 12, 2023, the claimant received a third decision regarding a third employer with the same characteristics.

The employer received a statement of charges dated May 9, 2023 for the first quarter of 2023. (Exhibit D3) The statement included a charge for benefits paid to the claimant beginning January 1, 2023. The employer filed its appeal of that statement of charges on May 16, 2023. (Exhibit D2)

REASONING AND CONCLUSIONS OF LAW:

The administrative law judge finds the employer's appeal to the statement of charges need not be evaluated because its protest was timely. He further finds the claimant has requalified for benefits. Benefits are granted, provided the claimant is otherwise eligible. The employer's account shall be relieved from charges.

Iowa Code section 96.6(2) provides:

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 issuing the notice of the filing of the claim to protest payment of benefits to the claimant. All interested parties shall select a format as specified by the department to receive such notifications. The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsections 10 and 11, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". Unless the claimant or other interested party, after notification or within ten calendar days after notification was issued, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Admin. Code r. 871-24.8(2) provides:

Notifying employing units of claims filed, requests for wage and separation information, and decisions made.

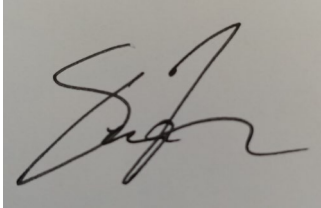
24.8(2) Responding by employing units to a notice of the filing of an initial claim or a request for wage and separation information and protesting the payment of benefits.

- a. The employing unit which receives a Form 65-5317, Notice of Claim, or 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.
 - c. If the employing unit protests that the individual was not an employee and it is subsequently determined that the individual's name was changed, the employing unit shall be deemed to have not been properly notified and the employing unit shall again be provided the opportunity to respond to the notice of the filing of the initial claim.
 - d. The employing unit has the option of notifying the department under conditions which, in the opinion of the employing unit, may disqualify an individual from receiving benefits. The notification may be submitted electronically.
- (1) The Notice of Separation, Form 60-0154, **must be postmarked or received before** or within ten days of the date that the Notice of Claim, Form 65-5317, was mailed to the employer. In the event that the tenth day falls on Saturday, Sunday or holiday, the protest period is extended to the next working day of the department. If a claim for unemployment insurance benefits has not been filed, the Notice of Separation may be accepted at any time. [Emphasis added]

The administrative law judge concludes that the employer has filed a timely protest. The employer facsimiled in its protest on January 10, 2023, before the due date on the notice of claim. The administrative law judge further concludes that the claimant has requalified for benefits since the separation from this employer. Accordingly, benefits are allowed provided the claimant is otherwise eligible for benefits. The account of the employer shall not be charged.

DECISION:

The statement of charges dated May 9, 2023, reference 04, for the first quarter of 2023 is MODIFIED IN FAVOR OF THE APPELLANT/EMPLOYER. 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 shall not be charged.

A handwritten signature in black ink, appearing to read 'Sean M. Nelson', is written over a light gray rectangular background.

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

June 12, 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
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> 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.