

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

ROBERT A BREWER
Claimant

QPS EMPLOYMENT GROUP INC
Employer

APPEAL 24A-UI-03099-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

OC: 07/16/23
Claimant: Respondent (1R)

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 March 18, 2024, QPS Employment Group Inc (employer) filed an appeal from the statement of charges dated February 9, 2024 for the fourth quarter of 2023. A hearing notice was issued to the last known address of the parties scheduling the telephonic hearing for April 16, 2024.

A telephonic hearing was held on April 16, 2024, pursuant to due notice.

Robert Brewer (claimant) did not participate in the hearing. The employer, QPS Employment Group Inc, did participate through witness Jessica Segner. The Department's Exhibits D1, D2 and D3 were admitted into the record. Official notice was taken of claimant's administrative unemployment insurance benefits records.

ISSUES:

- I. Was the employer's protest timely?
- II. 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: Claimant filed a claim for benefits effective July 16, 2023. The claimant has base period wages that Iowa Workforce Development (IWD) transferred to Illinois to be included in claimant's Illinois combined wage claim

The administrative record shows a notice of wage transfer was mailed to the employer on July 21, 2023. The employer never received a notice of wage transfer for this claimant. The employer's first notice they were being charged for claimant's benefits was the receipt of the statement of charges mailed February 9, 2024 for the fourth quarter of 2023. The employer did appeal the statement of charges on March 5, 2024 when it sent correspondence to the Tax Bureau

The issue of whether the employer's account may be subject to charges has not been adjudicated by the IWD Benefits Bureau. Because this is a combined wage claim, the issue of whether the claimant is eligible for benefits is determined in the State for which the claim was filed, which was Illinois.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes employer's protest is timely and employer's appeal from the statement of charges is timely.

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 Admin. Code r. 871-24.35(2) provides:

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.

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 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.

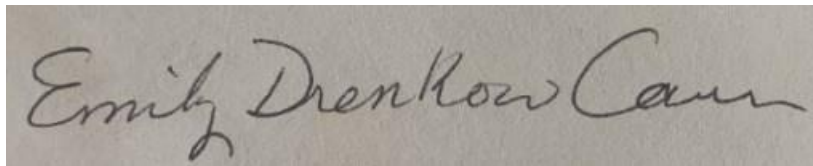
Iowa Code section 96.7(2)a(6), provides guidance in the situation here. It states that an employer who did not receive notice of the claim may appeal to the department for a hearing to determine the eligibility of an individual to receive benefits. In this case, the failure to file a timely protest to the notice of wage transfer was due to U.S. Postal Service error or delay pursuant to Iowa Admin. Code r. 871-24.35(2) because the notice of wage transfer was not received by the employer when the claimant filed the claim. The administrative law judge concludes that the employer filed its appeal of the notice of wage transfer within the time period prescribed by the Iowa Employment Security Law because it did not receive any initial notice of wage transfer indicating the claimant had filed a claim for benefits and it had been communicating with Iowa Workforce Development as of March 5, 2024. The employer's appeal of that statement of charges mailed February 9, 2024, is considered timely.

The issue of whether the employer's account is chargeable for benefits is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination and a decision shall be issued with appeal rights. The issue of whether the claimant is eligible for benefits is determined by the State of Illinois as this is a combined wage claim.

DECISION:

The February 9, 2024 statement of charges for the fourth quarter of 2023 is affirmed pending a determination on the remanded issue. The employer has filed a timely appeal from the February 9, 2024 statement of charges as no initial notice of wage transfer was received by the employer when the original claim was filed and it's March 5, 2024 appeal shall be considered timely..

REMAND: The issue of whether the employer's account may be subject to charges shall be remanded to the Benefits Bureau for an initial investigation and determination with appeal rights

A handwritten signature in dark ink on a light-colored background. The signature reads "Emily Drenkow Carr" in a cursive, flowing script.

Emily Drenkow Carr
Administrative Law Judge

April 24, 2024
Decision Dated and Mailed

ed/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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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:

**Iowa Employment Appeal Board
6200 Park Avenue Suite 100
Des Moines, Iowa 50321
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 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.