

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

JAZLAN BOYD
Claimant

**COFFEE SPECIALISTS LLC
SCOOTERS COFFEE HOUSE**
Employer

APPEAL NO. 24A-UI-09557-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 05/12/24
Claimant: Respondent (1)**

Iowa Code Section 96.6(2) - Timeliness of Protest
Iowa Code Section 96.7(2)(a)(6) – Appeal from Statement of Charges

STATEMENT OF THE CASE:

On November 12, 2024, the employer (through Timmer and Associates, C.P.A. P.C.) filed an appeal from the quarterly Statement of Charges that Iowa Workforce Development mailed to employer's address of record on November 8, 2024. The November 8, 2024 Statement of Charges included a \$563.39 charge to the employer's account for benefits paid to claimant Jazlan Boyd during the calendar quarter that ended September 30, 2024.

After due notice was issued, a hearing was held on December 2, 2024. Jazlan Boyd (claimant) did not comply with the hearing notice instructions to call the designated toll-free number at the time of the hearing and did not participate. Andrea Willis of Timmer and Associates (TAA) represented the employer. Exhibit 1, the online appeal, was received into evidence. The administrative law judge took official notice of the following Iowa Workforce Development administrative records: the Statement of Charges mailed on November 8, 2024, the SIDES record of the employer's June 21, 2019 enrollment in SIDES and the May 15, 2024 SIDES notice of claim reflecting the absence of an employer response, the employer's www.myiowaui.org account, DBRO and WAGEA. Though the administrative law judge could not access the www.myiowaui.org account information at the time of the hearing, the employer representative accessed the account during the hearing and provided relevant information from the account.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.
Whether there is good cause to deem the employer's late protest as timely.
Whether the employer filed a timely appeal from the Statement of Charges.
Whether the Statement of Charges is correct.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds:

On June 21, 2019, Coffee Specialists, L.L.C. (employer) enrolled in SIDES and thereby elected to electronically receive and respond to notice of claims. The employer provided an email address to which the email alerts to SIDES posting of notice of claims should be directed: vmrcoffee@gmail.com. The employer's SIDES enrollment continued to be in effect as of the December 2, 2024 appeal hearing, with the same email address designated as the address to which email alerts to SIDES postings should be directed. The continued SIDES enrollment and associated employer-designated email address are reflected in the SIDES system at the employer's www.myiowaui.org account. The www.myiowaui.org SIDES enrollment information includes a notice that notice of claims would be issued electronically and would not be mailed to the employer after the employer enrolled in SIDES.

At the beginning of 2023, the employer commenced using Timmer and Associates, C.P.A. P.C. (TAA) as the employer's account. The employer did not alert TAA to the existence of the initial SIDES enrollment and the continuing SIDES. However, TAA gained access to the www.myiowaui.org account that reflected the SIDES enrollment. The SIDES enrollment information included on the employer's address page of the www.myiowaui.org included an email address for IWD SIDES administrator. TAA is familiar with SIDES, based on its use of that system when representing some of its other clients.

The Coffee Specialists, L.L.C. co-owner associated with the vmrcoffee@gmail.com email address passed away after the employer enrolled in SIDES. Other interested parties continued to own and operate Coffee Specialists, L.L.C. None of those individuals or entities with an ownership interest took steps to discontinue the SIDES enrollment or to update the email address to which email alerts to SIDES notice of claim postings should be directed. Nor did TAA take such steps in response to the SIDES enrollment information available to TAA through the employer's www.myiowaui.org account.

Claimant Jazlan Boyd established an original claim for unemployment insurance benefits that was effective May 12, 2024. The "base period" for purposes of the claim consists of the four quarters of 2023. Coffee Specialists, L.L.C. is a base period employer.

On May 15, 2024, Iowa Workforce Development posted a notice of claim to the employer's SIDES account concerning Ms. Boyd's claim for benefits. The SIDES post included a May 28, 2024 deadline for the employer's protest/response to the notice of claim. The SIDES record reflects that the employer did not respond to the notice of claim. The SIDES posting of the notice of claim was accompanied by an email alert directed to the employer-designated email address of record (vmrcoffee@gmail.com) on May 15, 2024. The email alert included reference to the SIDES notice of claim and to the May 28, 2024 protest deadline.

Neither the employer nor TAA filed a protest by the May 28, 2024 protest deadline.

During the calendar quarter that ended September 30, 2024, IWD disbursed or otherwise credited to the claimant unemployment insurance benefits totaling \$1,068.00.

On November 8, 2024, Iowa Workforce Development mailed a quarterly Statement of Charges to the employer's address of record. The mailing address of record was and is the Davenport business location for Timmer and Associates, C.P.A. P.C. The Statement of Charges included a \$563.39 charge to the employer's account for benefits paid to the claimant during the calendar quarter that ended September 30, 2024. The employer's accountant received the Statement of Charges in a timely manner.

The Statement of Charges included a statement of appeals rights:

Appeal of Claimant Eligibility for Benefits

If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 30 days after the mailing date of this statement.

The statement of appeal rights provided instructions for filing an appeal by email, by fax, and by mail.

On November 12, 2024, Andrea Willis of Timmer and Associates, C.P.A. P.C. completed and transmitted an online appeal from the November 8, 2024 Statement of Charges. In the online appeal, Ms. Willis asserted the employer had not received initial notice of the claim. The Appeals Bureau received the appeal on November 12, 2024.

REASONING AND CONCLUSIONS OF LAW:

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. IDJS*, 276 N.W.2d 373 (Iowa 1979). The administrative law judge considers the reasoning and holding of the court 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.

Iowa Administrative Code Rule 87124.8(2)(a) and (b) provide as follows:

(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 a 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.

Iowa Administrative Code Rule 871-24.35(1) provides:

Date of submission and extension of time for payments and notices.

(1) Except as otherwise provided by statute or by division rule, any payment, appeal, application, request, notice, objection, petition, report or other information or document submitted to the division shall be considered received by and filed with the division:

- a. If transmitted via the United States Postal Service on the date it is mailed as shown by the postmark, or in the absence of a postmark the postage meter mark of the envelope in which it is received; or if not postmarked or postage meter marked or if the mark is illegible, on the date entered on the document as the date of completion.
- b. If transmitted via the State Identification Data Exchange System (SIDES), maintained by the United States Department of Labor, on the date it was submitted to SIDES.
- c. If transmitted by any means other than those outlined in paragraphs 24.35(1)"a" and "b", on the date it is received by the division.

Iowa Administrative Code Rule 871-24.35(2) provides:

Date of submission and extension of time for payments and notices.

(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.

- a. For submission that is not within the statutory or regulatory period to be considered timely, the interested party must submit a written explanation setting forth the circumstances of the delay.
- b. The division shall designate personnel who are to decide whether an extension of time shall be granted.
- c. No submission shall be considered timely if the delay in filing was unreasonable, as determined by the department after considering the circumstances in the case.
- d. If submission is not considered timely, although the interested party contends that the delay was due to division error or misinformation or delay or other action of the United States postal service, the division shall issue an appealable decision to the interested party.

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 rule 87126.4(3) provides:

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.

The evidence in the record establishes a November 12, 2024 untimely protest. Pursuant to the employer's election to receive electronic notice of claims via SIDES, IWD on May 15, 2024 provided timely notice of the claim via SIDES. Pursuant to the employer's designation of an email address to which email alerts of SIDES posts should be directed, IWD emailed an alert to the employer email address of record on May 15, 2024. Once the employer enrolled in SIDES, the employer was responsible for maintaining and providing updated employer contact information in connection with the SIDES account. The www.myiowaui.org SIDES enrollment information included an email address for the IWD SIDES administrator for that purpose. The employer's neglect of the SIDES account, the employer's failure to alert the accountant to the SIDES account, and the accountant's failure to review and act on the SIDES enrollment information contained at the employer's www.myiowaui.org account do not negate the fact that IWD provided appropriate and timely notice of the claim pursuant to the employer's election. The employer did not file a protest by the May 28, 2024 protest deadline. The employer's protest of the claim came in the form of the employer's November 12, 2024 appeal from the November 8, 2024 Statement of Charges. The late filing of the protest was attributable to the employer and was not attributable to IWD or to the United States Postal Service. There is not good cause to treat the late protest as a timely protest. Accordingly, the administrative law judge lacks jurisdiction to disturb IWD's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, or the employer's liability for benefits. IWD's initial determination remains in effect.

Because the November 8, 2024 Statement of Charges was not the employer's first notice of the claim, the appeal rights set forth in the Statement of Charges do not apply. The November 8, 2024 Statement of Charges remains in effect.

DECISION:

The employer's November 12, 2024 appeal from the November 8, 2024 Statement of Charges was an untimely protest relative to the May 15, 2024 SIDES notice of claim and, therefore, cannot be considered. IWD's initial determination regarding the nature of the claimant's separation from the employment, the claimant's eligibility for benefits, or the employer's liability for benefits remains in effect. Because the November 8, 2024 Statement of Charges was not the employer's first notice of the claim, the appeal rights set forth in the Statement of Charges does not apply. The November 8, 2024 Statement of Charges remains in effect.

A handwritten signature in cursive script that reads "James E. Timberland". The signature is written in dark ink on a light-colored background.

James E. Timberland
Administrative Law Judge

December 10, 2024
Decision Dated and Mailed

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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
6200 Park Ave 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>.

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
6200 Park Ave 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 está en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf>.

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.