

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

ROSS B WILLIAMS
Claimant

ALL AMERICAN EXCAVATION LLC
Employer

APPEAL 23A-UI-09070-ED-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 01/08/23
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:

The employer, All American Excavation, filed an appeal from the Statement of Charges dated August 9, 2023, for the quarter ending June 30, 2023. Due notice was issued and a telephone hearing was held on October 10, 2023. The parties waived receipt of notice of Iowa Code § 96.7(2)a(6) to be included on the hearing notice. The claimant, Ross Williams, participated personally. The employer, All American Excavation, LCC, participated through witness, Tim Myers. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records.

ISSUES:

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 was the owner of the company and sold the company to Tim Myers in June 2020. The Claimant continued to work for the Employer under Mr. Myers ownership until January 7, 2022. The Employer laid the Claimant off for lack of work in January 2022. The Employer did receive the Notice of Claim but chose not to file a protest in response to the Claimant's lay-off in January 2022. Work became available to the Claimant again in the Spring of 2022, but the Claimant did not return to work. The Claimant separated from employment in Spring 2022 when the Claimant began to work for a different contractor. The Employer did not receive a notice of claim regarding the Claimant's separation from employment in the Spring of 2022.

The Employer did not receive notice of the claimant's receipt of benefits until the time it filed its appeal on September 24, 2023. The employer filed its appeal of that Statement of Charges on September 24, 2023.

There has been no initial investigation and determination regarding claimant's separation from this employer. The issue regarding whether claimant's separation from employment from this employer is disqualifying will be remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination with notice to both parties.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes as follows:

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(2)a(6) provides:

2. *Contribution rates based on benefit experience.*

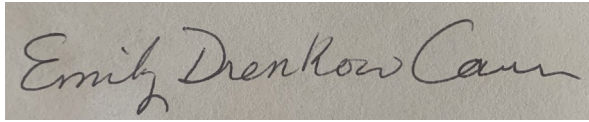
a. (6) Within forty days after the close of each calendar quarter, the department shall notify each employer of the amount of benefits charged to the employer's account during that quarter. The notification shall show the name of each individual to whom benefits were paid, the individual's social security 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.

The administrative law judge concludes that the employer filed its appeal of the Statement of Charges within the time period prescribed by the Iowa Employment Security Law because no initial investigation and determination was made by the Benefits Bureau regarding claimant's separation from employment. The employer's appeal of the Statement of Charges on the day it was received, September 24, 2023 is timely. The issue regarding the reason for the separation is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.

DECISION:

The employer has filed a timely appeal from the Statement of Charges dated August 9, 2023 for the second quarter of 2023. The Statement of Charges dated August 9, 2023 is affirmed pending the outcome of the remanded issue.

REMAND: The issue of the reason for the separation from employment is remanded to the Benefits Bureau of Iowa Workforce Development for an initial investigation and determination.



Emily Drenkow Carr
Administrative Law Judge

October 11, 2023
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:

**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.