

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

68-0157 (9-06) - 3091078 - EI

**LADARIUS D CARADINE**  
Claimant

**APPEAL NO. 19A-UI-04194-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**CNE LTD**  
Employer

**OC: 01/20/19**  
**Claimant: Respondent (1)**

Iowa Code Section 96.6-2 - Timeliness of Protest

**STATEMENT OF THE CASE:**

The employer filed an appeal in response to the quarterly statement of charges that Iowa Workforce Development mailed to the employer on May 9, 2019. The Appeals Bureau labeled the employer's appeal from the quarterly statement of charges Reference 03 (original claim date 01/20/19) for docketing purposes. The employer's appeal from the quarterly statement of charges was effectively an appeal from the Agency's earlier determination, in the absence of an employer protest, that the claimant was eligible for benefits in connection with the January 20, 2019 original claim provided he met all other eligibility requirements and that the employer's account could be assessed for benefits paid to the claimant. After due notice was issued, a hearing was held by telephone conference call on June 17, 2019. Claimant Ladarius Caradine did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Leah Connor represented the employer. Exhibits 1 and 2 and Department Exhibits D-1 through D-4 were received into evidence. The administrative law judge took official notice of the WAGE-A and WAGE-B quarter wage reports.

**ISSUE:**

Whether the employer's protest of the claim for benefits was timely.

**FINDINGS OF FACT:**

Having reviewed the evidence in the record, the administrative law judge finds: Claimant Ladarius Caradine established an original claim for benefits that was effective January 20, 2019. Iowa Workforce Development set Mr. Caradine's weekly benefit amount at \$395.00. CNE Ltd. is a base period employer in connection with the claim. On January 24, 2019, Iowa Workforce Development mailed a notice of claim concerning Mr. Caradine to the employer's address of record. The notice of claim referenced the \$395.00 weekly benefit amount and the employer's \$1,467.67 maximum liability in connection with the claim. The maximum liability amount set forth on the notice of claim omitted a decimal point and dollar sign. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by the due date set forth on the notice, which was February 4, 2019. The notice of claim was received at the employer's address of record in a timely manner, within a couple days of the January 24, 2019 mailing date.

Leah Connor, Office Manager, is the employer representative responsible for responding to notices of unemployment insurance claims. At some point, Ms. Connor put employer protest information on the notice of claim form and signed the form to certify the accuracy of the information she placed on the form. Ms. Connor did not date her signature in the space on the form provided for a signature date. Ms. Connor believes that she faxed a protest to Iowa Workforce Development. However, Ms. Connor cannot say what date she faxed the protest or whether the purported fax was transmitted before, on, or after the February 4, 2019 protest due date. The employer is unable to locate a fax transmission record for the purported fax transmission. Prior to May 14, 2019, Iowa Workforce Development received no protest or other correspondence from the employer indicating an intention to protest Mr. Caradine's claim.

On May 14, 2019, Ms. Connor contacted the Iowa Workforce Development Tax Bureau in response to the quarterly statement of charges Iowa Workforce Development mailed to the employer on May 9, 2019 for the calendar quarter that ended on March 31, 2019. The quarterly statement of charges included a \$1,467.67 charge for benefits paid to Mr. Caradine in connection with the January 20, 2019 original claim. The amount charged to the employer's account was one-third of the \$4,300.00 in wages the employer paid to Mr. Caradine during the first quarter of 2018. The wages the employer paid to Mr. Caradine during the first quarter of 2018 were the only wages the employer paid to the claimant. The May 14, 2019 correspondence did not result in Iowa Workforce Development entering a decision regarding the timeliness of the employer's protest. Instead, the Workforce Development representative advised Ms. Connor of the employer's right to appeal the quarterly statement of charges. On May 21, 2019, Ms. Connor electronically transmitted to Iowa Workforce Development the employer's appeal from the quarterly statement of charges. In the appeal correspondence, Ms. Connor asserted that she had earlier responded to the notice of claim and heard nothing thereafter regarding the status of the claim.

## **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.

Iowa Admin. Code r. 871-24.8(1) provides:

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

24.8(1) Issuance of a notice of the filing of an initial claim or a request for wage and separation information to employing units.

a. The Form 65-5317, Notice of Claim, and the Form 68-0221, Request for Wage and Separation Information, shall be:

(1) Addressed to the address or addresses as requested by the employing unit and agreed to by the department, to the business office of the employing unit where the records of the individual's employment are maintained, or to the employing unit's place of business where the individual claiming benefits was most recently employed; and

(2) Sent electronically via the United States Department of Labor State Information Data Exchange Systems (SIDES).

b. A notice of the filing of an initial claim or a request for wage and separation information shall be mailed to an owner, partner, executive officer, departmental manager or other responsible employee of the employing unit or to an agent designated to represent the employing unit in unemployment insurance matters.

(1) An agent who has been authorized to represent an employing unit in unemployment insurance matters may be furnished information from the files of the department to the extent designated in the authorization and in the same manner and to the same extent that the information would be furnished to the employing unit.

(2) The appointment of an agent to act for the employing unit and to receive documents and reports in no way abrogates the right of the department representatives to deal directly with the employing unit when it appears that this will best serve the interest of the parties.

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.

Iowa Admin. Code r. 871-24.8(3) provides:

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

(3) Completing and signing of forms by an employing unit which may affect the benefit rights of an individual.

a. A notice of separation, and any response by an employing unit or its authorized agent to a notice of the filing of an initial claim or request for wage and separation information, shall be accomplished by properly completing the form or computerized format provided by the department.

b. A notice of separation, and any paper response by an employing unit or its authorized agent to a notice of the filing of an initial claim or a request for wage and separation information, shall be executed by the employing unit on the form provided by the department under the signature of an individual proprietor, a partner, an executive officer, a department manager or other responsible employee who handles employee information, or who has direct knowledge of the reasons for the individual's separation from employment or by completing the computerized form designated by the department.

c. Rescinded IAB 8/2/17, effective 9/6/17.

d. Failure by an employing unit or its authorized agent to timely submit any notice or response requested by the department shall result in the department representative's making a determination of the individual's rights to benefits based on the information available.

Iowa Admin. Code r. 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 Admin. Code r. 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.

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 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 evidence in the record establishes that the employer's protest of Mr. Caradine's unemployment insurance claim was untimely. The employer received timely notice of the claim for benefits via the notice of claim that was mailed on January 24, 2019. The employer failed to file a protest by the February 4, 2019 protest deadline or at any time prior to May 14, 2019. The employer presented insufficient evidence to support the employer's belated and vague assertion that the employer had faxed a protest. The quarterly statement of charges that Iowa Workforce Development mailed to the employer on May 9, 2019 was not the employer's first notice of claim for benefits. The employer's email contact with Iowa Workforce Development on May 14, 2019 was in essence a significantly late protest of the claim for benefits. The employer's failure to file a timely protest was not attributable to Iowa Workforce Development error or misinformation or delay or other action of the United States Postal Service. Accordingly, there is not good cause to treat the late protest as a timely protest. Because the protest was untimely, the administrative law judge lacks jurisdiction to disturb the Agency's initial determination regarding the claimant's eligibility for benefits or the employer's liability for benefits. The Agency's initial determination of the claimant's eligibility for benefits and the employer's liability for benefits shall remain in effect. Because the protest was untimely, there is no jurisdiction for or need to address the question of whether the statement of charges set forth the correct charge to the employer's account.

**DECISION:**

The employer's protest from the January 24, 2019 notice of claim was untimely. The claimant is eligible for benefits provided he meets all other eligibility requirements. The employer's account may be charged for benefits. The charge to the employer's account reflected in the quarterly statement of charges mailed on May 9, 2019 shall stand. The Appeals Bureau shall docket this decision in the Agency's records under the Reference 03 heading.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

jet/rvs