

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

BRANDON S MOSHER

Claimant

APPEAL NO. 17A-UI-04410-JTT

**ADMINISTRATIVE LAW JUDGE
DECISION**

WAPELLO COUNTY AUDITOR

Employer

OC: 12/11/16

Claimant: Respondent (4)

Iowa Code section 96.6-2 - Timeliness of Protest

STATEMENT OF THE CASE:

The employer filed an appeal from the Notice of Reimbursable Benefit Charges that was mailed on April 15, 2017. As part of the appeal the employer asserts that the employer filed a timely protest in response to the notice of claim that was mailed to the employer on December 13, 2016. After due notice was issued, a hearing was held by telephone conference call on May 15, 2017. Claimant Brandon Mosher participated. Brian Moore, County Engineer, represented the employer. Exhibits One through Four were received into evidence. The administrative law judge took official notice of the following agency administrative records: WAGEA, DBRO, the quarterly Notice of Reimbursable Benefit Charges mailed on January 15, 2017 for the quarter that ended December 31, 2016 and the employer's payment, and the employer's payment of the \$5,600.00 charge in the Notice of Reimbursable Benefit Charges mailed on April 15, 2017.

ISSUE:

Whether the employer filed a timely protest in response to the notice of claim mailed to the employer on December 13, 2016.

Whether the Notice of Reimbursable Benefit Charges that was mailed on April 15, 2017 for the quarter that ended March 31, 2017 set forth the correct charge amount.

FINDINGS OF FACT:

Having reviewed the evidence in the record, the administrative law judge finds: On December 13, 2016, Iowa Workforce Development mailed a notice of claim concerning claimant Brandon Mosher to Wapello County at the correct address of record. The notice of claim indicated on its face that employer's liability for benefits paid to Mr. Mosher in connection with the December 11, 2016 original claim was capped at \$3,080.00. That figure represented one-third of the claimant's base period wages from the employment. The notice of claim contained a warning that any protest must be postmarked, faxed or returned by December 23, 2016. The Wapello County Auditor received the notice of claim on December 15, 2016 and forwarded the notice of claim to the Wapello County Engineer, Brian Moore, for response. At some point Deb Salter, Secretary and Payroll Clerk for the Wapello County Engineer, completed the employer's protest information on the notice of claim form and then presented the notice of claim form to

Mr. Moore for his signature. Mr. Moore signed the notice of claim form to certify the accuracy of the information contained on the form. Mr. Moore did not date his signature in the space provided on the form for the certification signature date. The employer left wholly blank the left side of form wherein the form requested protest information. In other words, the form, on its face, does not indicate that the employer was protesting the claim. After Mr. Moore signed the form, Ms. Salter again took control of the form. Mr. Moore does not when, whether or how the form was submitted to Iowa Workforce Development. Workforce Development records indicate that no protest was received from the employer until April 21, 2017.

On January 15, 2017, Iowa Workforce Development mailed a Notice of Reimbursable Benefit Charges to Wapello County for the calendar quarter that ended December 31, 2016. The Notice of Reimbursable Benefit Charges contained a \$520.00 charge for benefits paid to claimant Brandon Mosher during the fourth quarter of 2016. Wapello remitted payment for the \$520.00 charge. The Notice of Reimbursable Benefit Charges correctly stated the benefits that had been disbursed to Mr. Mosher during the fourth quarter of 2016. While Mr. Moore asserts that Wapello County protested the quarterly charge by letter on January 20, 2017, Iowa Workforce Development records indicate that the agency did not receive the purported protest letter. On February 2, 2017, Wapello County paid the \$520.00 charge.

On April 15, 2017, Iowa Workforce Development mailed a Notice of Reimbursable Benefit Charges to Wapello County for the calendar quarter that ended March 31, 2017. The Notice of Reimbursable Benefit Charges contained a \$5,600.00 charge for benefits purported paid to claimant Brandon Mosher during the first quarter of 2017. The \$5,600.00 amount was erroneous. The correct charge amount for benefits disbursed to Mr. Mosher for the first quarter of 2017 was \$2,560.00.

On April 19, 2017, Wapello County mailed its protest of the Notice of Reimbursable Benefit Charges that was mailed to Wapello on April 15, 2017. The envelope in which the County mailed the protest bears an April 19, 2017 postmark. Wapello County included a copy of the December 13, 2016 notice of claim form and a copy of the April 15, 2017 Notice of Reimbursable Benefit Charges in the April 19, 2017 correspondence to Iowa Workforce Development. In the employer's appeal letter, the employer asserted that the employer had in December 2016 faxed a protest to Workforce Development in response to the notice of claim.

REASONING AND CONCLUSIONS OF LAW:

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 by any means other than the United States postal service 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.

Iowa Code § 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.

The weight of the evidence in the record establishes that the employer's protest of the claim was untimely. The employer received the December 13, 2016 notice of claim in a timely manner on December 15, 2016. At that point the employer had eight days in which to file a protest by the December 23, 2016. In other words, the employer had a reasonable opportunity to submit a timely protest. The evidence in the record does not support the employer's assertion that the employer filed a timely protest in December 2016. If Workforce Development had received a timely protest, Workforce Development would in the ordinary course of business have set a fact-finding interview and would have provided notice to the employer. The employer asserts in the April 19, 2017 appeal letter that the employer faxed a protest in December. However, the employer has not produced a fax record to support that assertion or provided

testimony from the person purported to have faxed the protest. At the appeal hearing, the employer witness suggested the protest might have been mailed, but could not say by whom. The notice of claim form provided by the employer as part of the April 19, 2017 mailing indicates other defects in the employer's response to the notice of claim. Though the form requires a certification signature date, the employer overlooked that requirement. Though the form requires an assertion that the employer is in fact protesting the claim and the basis for the protest, the employer left that entire section of the form entirely blank. Thus, even if the form had been submitted by December 23, 2016 deadline, the form does not in fact protest the claim. The weight of the evidence indicates that no protest was filed until the April 19, 2017 mailing. Because the employer failed to file a timely protest, Workforce Development's initial determination regarding the claimant's eligibility for benefits and the employer's liability for benefits remains in effect.

The remaining issue is whether the April 15, 2017 Notice of Reimbursable Benefit Charges billed Wapello County the correct amount for unemployment insurance benefits paid to Mr. Mosher during the first quarter of 2017. Iowa Code section 96.7(2)(a)(6) requires that Iowa Workforce Development notify each employer, within 40 days after the close of each calendar quarter, of the amount of benefits charged to the employer's account during that quarter. Inherent in the statute is the expectation that Workforce Development will accurately report the amount of benefits disbursed during the calendar quarter. The April 15, 2017 Notice of Reimbursable Benefit Charges erroneously billed Wapello County \$5,600.00. The amount of benefits disbursed to the claimant and to be charged to the employer for the first quarter of 2017 was \$2,560.00. Wapello County filed a timely challenge of the erroneous assessment amount contained in April 15, 2017 Notice of Reimbursable Benefit Charges. Because Wapello County has already paid the \$5,600.00 charge, Workforce Development must credit Wapello County \$3,040.00, the amount Iowa Workforce Development overcharged Wapello County.

DECISION:

The agency's initial determination that the claimant was eligible for benefits provided he is otherwise eligible and that the employer's account may be charged for benefits remains in effect. The April 15, 2017 Notice of Reimbursable Benefit Charges is corrected to set for the correct amount benefits disbursed to the claimant and to be charged to Wapello County. That correct amount is \$2,560.00. Because Wapello County has already paid the \$5,600.00 charge, Workforce Development must credit Wapello County \$3,040.00, the amount Iowa Workforce Development overcharged Wapello County.

James E. Timberland
Administrative Law Judge

Decision Dated and Mailed

jet/scn