

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

BILLIE JO BROWN
Claimant

APPEAL NO. 24A-UI-04597-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

DIVINE TOUCH OF IOWA LLC
DIVINE TOUCH OF IOWA
Employer

OC: 12/03/23
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 May 13, 2024, the employer filed an appeal from the Statement of Charges that Iowa Workforce Development mailed to the employer on May 9, 2024 for the calendar quarter that ended March 31, 2024. The Statement of Charges included a \$4,560.58 charge to the employer's account for benefits paid to the claimant during the first quarter of 2024. After due notice was issued, a hearing was held on June 11, 2024. Billie Jo Brown (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. Attorney Jeffrey Egge represented the employer and presented testimony through Raymond Agbor. Exhibit 1 and Department Exhibits D1 through D5 were received into evidence.

ISSUES:

Whether the employer's protest of the claim for benefits was timely.
Whether the employer filed a timely appeal from the Statement of Charges.

FINDINGS OF FACT:

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

Effective November 28, 2023, Divine Touch of Iowa, L.L.C. (employer) elected to receive electronic notice of claims via SIDES. At that time, the employer provided an email address to which the employer wanted Iowa Workforce Development to send the automatically-generated email message alert regarding notice of claims posted to the employer's SIDES account. The employer's enrollment in SIDES occurred at a time when Catherine Arrah was Chief Executive Officer.

Billie Jo Brown (claimant) established an original claim for benefits that was effective December 3, 2023. Divine Touch of Iowa, L.L.C. is the most recent base period employer for purposes of Ms. Brown's unemployment insurance claim.

On December 7, 2023, Iowa Workforce Development issued an electronic notice of claim to the employer via SIDES. The electronic notice of claim was accompanied by the automatically-generated email message alerting the employer to the SIDES post and the due date for the employer's response. The SIDES system directed the automatically-generated email message alert to the email address designated by the employer. The weight of the evidence establishes the automatically-generated email message alert was delivered to the designated email address on December 7, 2023. The SIDES notice of claim and the automatically-generated email message alert included a December 18, 2023 deadline for the employer's response. The employer did not respond to the notice of claim and did not file a response by the December 18, 2023 statutory deadline.

During the calendar quarter that ended March 31, 2024, IWD paid \$5,580.00 in unemployment insurance benefits to Ms. Brown.

In February 2024, Catherine Arrah left her position as Chief Executive Officer of Divine Touch of Iowa, L.L.C. and Raymond Agbor commenced his position as Acting Chief Executive Officer.

On May 9, 2024, Iowa Workforce Development mailed a Statement of Charges to the employer for the calendar quarter that ended March 31, 2024. The Statement of Charges included a \$4,560.58 charge to the employer's account for benefits paid to the claimant during the first quarter of 2024. Despite the Statement of Charges being directed to "Unit 92" rather than the correct unit, Unit 9207, the employer received the Statement of Charges in a timely manner. On May 13, 2024, Anthonia Mbu, President of Divine Touch of Iowa, L.L.C., completed and transmitted an online appeal from the May 9, 2024 Statement of Charges.

Mr. Agbor, Acting C.E.O., recently searched the employer's email records and at that time did not see the automatically-generated email message alert that accompanied the December 7, 2023 notice of claim. Mr. Agbor advises that the C.E.O. and the Operations Coordinator each have access to the email address in question. Mr. Agbor was not involved in matters related to the unemployment insurance claim, the notice of claim, or protest prior to the employer's receipt of the May 9, 2024 Statement of Charges.

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 weight of the evidence establishes an untimely protest. The employer's May 13, 2024 appeal from the Statement of Charges constituted an untimely protest of the claim. The weight of the evidence establishes that an electronic notice of claim was issued to the employer via SIDES on December 7, 2023 and was accompanied by an automatically-generated email message alerting the employer to the SIDES post. Both the SIDES post and the email message alert included the December 18, 2023 deadline for the employer's response. The email message alert was directed to the email address designated by the employer. The weight of the evidence indicates the email message alert was indeed delivered to the email address of record. Mr. Agbor's inability to find the email message five or six months after the fact is insufficient to rebut the presumption that the email message alert was indeed delivered on December 7, 2023 to the email address designated by the employer. The email message alert is an automatically-generated, integral component of the SIDES system. Because the email message is automatically-generated, no one has to take any steps to generate the message. Because the employer provided the email address to which the automatically-generated email is sent, there is no chance of the message being misdirected. The email message alert was sent several months before Mr. Agbor became involved in matters pertaining to the unemployment insurance claim. As Mr. Agbor testified, the former C.E.O. and the Operations Coordinator had access to the email address in question. Either or both could have overlooked the message,

could have missed the significance of the message, and/or could have deleted the message. The evidence does not establish that Iowa Workforce Development or the United States Postal System contributed in any way to the absence of a timely protest.

Because the May 9, 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.

Based on the untimely protest, the administrative law judge lacks jurisdiction to disturb the Iowa Workforce Development's initial determination regarding the claimant's separation from the employment, 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. Based on the untimely protest, the May 9, 2024 Statement of Charges, including the charge to the employer's account for benefits paid to the claimant during the first quarter of 2024, remains in effect.

DECISION:

The employer did not file a timely protest. IWD's initial determination regarding the separation, the claimant's eligibility for benefits, and the employer's liability for benefits remains in effect. Based on the untimely protest, the May 9, 2024 Statement of Charges, specifically the charge to the employer's account for benefits paid to the claimant during the first quarter of 2024, remains in effect.



James E. Timberland
Administrative Law Judge

June 12, 2024
Decision Dated and Mailed

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
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 adquiriera 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.