

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

RICHARD J HANCHETT
Claimant

APPEAL NO. 24A-UI-07826-JT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

SEDONA STAFFING INC
Employer

**OC: 04/14/24
Claimant: Respondent (4R)**

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

STATEMENT OF THE CASE:

On September 3, 2024, the employer filed an appeal from the Statement of Charges that Iowa Workforce Development mailed to the employer on August 9, 2024. The Statement of Charges included a \$2,212.09 charge for benefits paid to the claimant during the quarter that ended June 30, 2024. After due notice was issued, a hearing was held on September 19, 2024. Colleen McGuinty represented the employer. Richard Hanchett (claimant) participated from the start of the hearing but did not remain to the end of the hearing. Employer Exhibits 1, 2 and 3 were received into evidence. The administrative law judge took official notice of the following agency administrative records DBRO, NMRO, WAGEA, the SIDES notice of claim and protest, the reference 01 through 06 decisions, and the administrative law judge decisions in Appeal Numbers 24AUI05943ART and 24AUI05944ART

Mr. Hanchett left the hearing at 2:06 p.m. This was after the employer's testimony had concluded and near the anticipated end of Mr. Hanchett's testimony. Mr. Hanchett departed before the employer had an opportunity to question Mr. Hanchett. The employer stated that Mr. Hanchett's premature departure from the hearing had no impact on the evidence the employer desired to present at the hearing. The administrative law judge held the record open until 2:11 p.m. When Mr. Hanchett did not rejoin the hearing, the administrative law judge concluded the hearing and dismissed the employer from the hearing.

ISSUE:

Whether the employer's protest of the claim for benefits was 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:

Richard Hanchett (claimant) established an original claim for unemployment insurance benefits that was effective April 14, 2024. Iowa Workforce Development set the weekly benefit amount at \$600.00. IWD paid \$2,800.00 in benefits to Mr. Hanchett in June 2024 for five weeks between April 14, 2024 and June 22, 2024.

Sedona Staffing, Inc. (employer account number 237958) is a base period employer in connection with Mr. Hanchett's claim for benefits. The base period consists of the four quarters of 2024. Sedona Staffing, Inc. paid Mr. Hanchett \$2,635.85 (rounded to \$2,635.00) in wages during the third quarter of 2023 and \$12,987.55 (rounded to \$12,987.00) in wages during the fourth quarter of 2023. The base period wages paid by this employer totaled \$15,622.00. The associated wage credit amount (one-third of the base period wages paid by this employer) is \$5,207.33. The wage credit total represents the employer's maximum potential liability on the claim.

On May 21, 2024, Iowa Workforce Development issued an electronic notice of claim to the employer via SIDES. The notice of claim included a May 31, 2024 deadline for the employer's response. On May 28, 2024, the employer transmitted a protest to IWD via SIDES. IWD received the protest on May 28, 2024.

On June 13, 2024, IWD Benefits Bureau held a fact-finding interview that addressed whether the claimant was able to work and available for work during the period beginning April 14, 2024.

On July 14, 2024, IWD mailed to Mr. Hanchett and to the employer a reference 01 decision. The reference 01 decision allowed benefits to the claimant for the period beginning April 14, 2024, provided the claimant was otherwise eligible, based on the deputy's determination that the claimant was able to work and available for work. On June 24, 2024, the employer filed a timely appeal from the reference 01 decision. On July 12, 2024, DIAL Administrative Hearings Division, UI Appeals Bureau, held a hearing that addressed the employer's appeal from the reference 01 decision. The employer participated in the hearing. Mr. Hanchett did not participate in the hearing. See Appeal Number 24AUI05943ART

On July 15, 2024, the Appeals Bureau mailed two appeal decisions to Mr. Hanchett and to the employer at their last-known address of record. See Appeal Numbers 24AUI05943ART and 24AUI05944ART.

The administrative law judge decision in Appeal Number 24AUI05943ART denied benefits for the period beginning April 14, 2024, based on the administrative law judge's ruling that Mr. Hanchett did not present evidence to meet his burden of proving that he was able to work and available for work. The administrative law judge considered the weeks between April 14, 2024 and June 22, 2024. The administrative law judge's decision reversed the June 14, 2024 (reference 01) decision. The administrative law judge's decision included a remand to IWD Benefits Bureau for determination of whether the claimant was overpaid unemployment insurance benefits in light of the disqualification set forth in 24AUI05943ART. In the absence of an appeal from the administrative law judge decision in Appeal Number 24AUI05943ART, the disqualification set forth in the decision became final.

On July 17, 2024, IWD Benefits Bureau mailed the July 17, 2024 (reference 06) decision to the claimant at his Davenport last-known address of record. The reference 06 decision held the claimant was overpaid \$2,800.00 in benefits for five weeks between April 14, 2024 and June 22, 2024, due to the administrative law judge's ruling in Appeal Number 24AUI05943ART. The \$2,800.00 overpayment total equaled the \$2,800.00 in benefits that IWD had paid the claimant

during the second quarter of 2024. In the absence of an appeal from the reference 06 overpayment decision, the overpayment decision became final.

On August 9, 2024, IWD Tax Bureau mailed a quarterly Statement of Charges to the employer at the employer's address of record. The Statement of Charges included a \$2,212.09 charge to the employer's account for benefits paid to the claimant during the second quarter of 2024. The employer received the Statement of Charges in a timely manner. On September 3, 2024, the employer faxed an appeal to the Appeals Bureau. The employer attached the decision page (page 3) of the administrative law judge's decision in Appeal Number 24AUI05943ART.

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 employer filed a timely protest on May 28, 2024. IWD acknowledged timely receipt of the protest.

The appeal rights set forth in Iowa Code section 96.7(2)(a)(6) and Iowa Admin. Code rule 87126.4(3) do not apply in this matter because the August 9, 2024 Statement of Charges was not the employer's first notice of the claim. IWD issued and the employer received the notice of claim on May 21, 2024. In addition, on July 14, 2024, IWD mailed the reference 01 decision to the employer. The reference 01 decision allowed benefits to the claimant for the period beginning April 14, 2024, provided the claimant was otherwise eligible, based on the deputy's determination that the claimant was able to work and available for work. The employer received the reference 01 decision in a timely manner. If the appeal rights set forth Iowa Code section 96.7(2)(a)(6) and Iowa Admin. Code rule 87126.4(3) had applied, the employer's September 3, 2024 appeal from the August 9, 2024 Statement of Charges would be timely.

This matter will be remanded to IWD Tax Bureau for determination of whether the employer's account should be credited in light of the administrative law judge decision in 24AU105943ART and the July 17, 2024 (reference 06) overpayment decision. The present decision leaves the charge to the employer's account in effect pending the remand IWD Tax Bureau and the Tax Bureau's determination of whether a credit is appropriate and the amount of the credit.

Mr. Hanchett attempted to use the appeal hearing pertaining to the employer's appeal from the August 9, 2024 Statement of Charges as a late challenge to earlier decisions that were adverse to Mr. Hanchett. That was not the purpose of the appeal hearing and the administrative law judge had no authority to modify or reverse the decisions Mr. Hanchett wished to challenge. If Mr. Hanchett wishes to appeal a decision entered by Iowa Workforce Development or DIAL UI Appeals Bureau, Mr. Hanchett should review the decision in question and follow the appeal instructions set forth on the decision.

DECISION:

The August 9, 2024 Statement of Charges is MODIFIED in favor of the employer only to acknowledge the employer's timely protest and timely challenge to the Statement of Charges. This matter will be remanded to IWD Tax Bureau for determination of whether the employer's account should be credited in light of the administrative law judge decision in 24AUI05943ART and the July 17, 2024 (reference 06) overpayment decision. The present decision leaves the charge to the employer's account in effect pending the remand to IWD Tax Bureau and the Tax Bureau's determination of whether a credit is appropriate and the amount of the credit.

REMAND:

This matter is REMANDED to IWD Tax Bureau for determination of whether the employer's account should be credited in light of the administrative law judge decision in 24AUI05943ART and in light of the July 17, 2024 (reference 06) overpayment decision.



James E. Timberland
Administrative Law Judge

September 25, 2024
Decision Dated and Mailed

JET/jkb

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.