

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

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

**JEFFREY B WICKETT**  
Claimant

**APPEAL NO. 19A-UI-06516-JTT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**ROSENBERGER ENTERPRISES INC**  
Employer

**OC: 12/09/18**  
**Claimant: Respondent (1)**

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

**STATEMENT OF THE CASE:**

The employer filed an appeal from the quarterly statement of charges that was mailed to the employer on August 9, 2019 and that contained a charge to the employer's account for benefits paid to claimant Jeffrey Wickett during the calendar quarter that ended June 30, 2019. After due notice was issued, a hearing was held by telephone conference call on September 11, 2019. Claimant Jeffrey Wickett did not respond to the hearing notice instructions to register a telephone number for the hearing and did not participate. Diane Rosenberger represented the employer. Exhibits 1 and 2 and Department Exhibits D-1 through D-4 were received into evidence.

**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 Jeffrey Wickett established a combined wage claim in Ohio that was effective December 9, 2018. Mr. Wickett requested that based period wages from his Iowa base period employments be included in the Ohio combined wage claim. Iowa Workforce Development transferred to Ohio base period wage information that included the wages Iowa employer Rosenberger Enterprises, Inc. had previously reported to Iowa Workforce Development as wages paid to Mr. Wickett during the fourth calendar quarter of 2017 and the first and second quarters of 2018. Rosenberger Enterprises had reported paying \$3,900.00 in wages for the fourth quarter of 2017, \$10,400.00 in wages for first quarter of 2018, and \$2,600.00 in wages for the second quarter of 2018.

On December 14, 2018, Iowa Workforce Development mailed a Notice of Wage Transfer to Rosenberger Enterprises, Inc. at the employer's last-known address of record. The Notice was mailed from Des Moines. The employer's address of record has at all times been a United States Postal Service Post Box in Indianola. The Notice mailed to the employer on December 14, 2018, told the employer that the employer's response to the Notice "MUST be

postmarked or received not later than ten days from the date this notice was mailed to you.” The Notice also included the following information:

Please note that your Iowa account may be charged in the future unless this form is returned to the address above, giving detailed information concerning this claim’s separation from your employment. Your response must be postmarked or received not later than ten days from the date this notice was mailed to you. *If the information justifies relief from charges in accordance with Iowa law, your account will not be charged.*

The Notice provided a mailing address and fax number to which the employer’s response to the Notice should be directed.

Diane Rosenberger is Secretary for Rosenberger Enterprises, Inc. and the employer agent responsible for responding to notices of unemployment insurance claims and quarter statements of charges. Ms. Rosenberger has no recollection of receiving the Notice of Wage Transfer that was mailed to the employer on December 14, 2018. According to Iowa Workforce Development records, the Notice of Wage Transfer correspondence was not returned to Iowa Workforce Development as undeliverable for any reason and no response was received until August 16, 2019.

On May 9, 2019, Iowa Workforce Development mailed a quarterly Statement of Charges to the employer at the employer’s last known address of record. The Statement of Charges contained a charge to the employer’s account for \$164.18 in benefits paid to Mr. Wickett in connection with the Ohio combined wage claim for the calendar quarter that ended March 31, 2019. The quarter statement of charges included the following statement of appeal rights and instructions for filing an appeal:

Appeal of Claimant Eligibility for Benefits

If you did not previously receive an initial notice of claim and wish to appeal the eligibility for unemployment insurance benefits of a claimant identified on this form, you may appeal in writing within 30 days after the date of the mailing of this statement.

Include the following in your written appeal:

Claimant’s name and Social Security Number

Claim Date

Separation date

Separation reason

Grounds for appeal

Iowa employer account number

The Statement of Charges provided a mailing address, an email address, and a fax number to which the employer’s appeal of the Statement of Charges was to be directed. Ms. Rosenberger has no recollection of receiving the Statement of Charges mailed on May 9, 2019. According to Iowa Workforce Development records, the May 9, 2019 Statement of Charges correspondence was not returned to Iowa Workforce Development as undeliverable for any reason and the Agency received no employer response to the particular Statement of Charges.

On August 9, 2019, Iowa Workforce Development mailed a quarterly Statement of Charges to the employer at the employer’s last known address of record. The Statement of Charges contained a charge to the employer’s account for \$1,231.35 in benefits paid to Mr. Wickett in

connection with the Ohio combined wage claim for the calendar quarter that ended June 30, 2019. The quarter statement of charges included the same statement of appeal rights and instructions for filing an appeal that appeared on the earlier quarterly Statement of Charges.

On August 14, 2019, Ms. Rosenberger contacted Iowa Workforce Development in response to the August 9, 2019, quarterly Statement of Charges. During that contact, Ms. Rosenberger asserted that Rosenberger Enterprises, Inc. had not received previous notice regarding Mr. Wickett's claim. On August 14, 2019, an Iowa Workforce Development representative emailed a copy of the December 14, 2018, Notice of Wage Transfer. On August 16, 2019, the employer electronically transmitted an appeal from the August 9, 2019 Statement of Charges. The Appeals Bureau received the appeal from the August 9, 2019 quarterly Statement of Charges on August 16, 2019.

#### **REASONING AND CONCLUSIONS OF LAW:**

Iowa Admin. Code r. 871-23.43(9)(a) and (b) provide, in relevant part, as follows:

(9) Combined wage claim transfer of wages.

a. Iowa employers whose wage credits are transferred from Iowa to an out-of-state paying state under the interstate reciprocal benefit plan as provided in Iowa Code section 96.20 will be liable for charges for benefits paid by the out-of-state paying state. ... Benefit payments shall be made in accordance with the claimant's eligibility under the paying state's law. Charges shall be assessed to the employer which are based on benefit payments made by the paying state.

b. The Iowa employer whose wage credits have been transferred and who has potential liability will be notified that the wages have been transferred, the state to which they have been transferred, and the mailing address to which a protest of potential charges may be mailed. This protest must be postmarked or received by the department within ten days of the date on the notice to be considered as a timely protest of charges. If the protest from either the reimbursable or contributory employer justifies relief of charges, charges shall go to the balancing account.

The 10-day deadline for protesting liability on combined wage claims derives from Iowa Code section 96.6(2), which provides, in pertinent part, as follows:

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 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.

The weight of the evidence in the record establishes an untimely protest. Ms. Rosenberger's recollection in August and September 2019 that the employer did not receive the Notice of Wage Transfer that was mailed to the employer's address of record on December 14, 2018 is insufficient to prove, by a preponderance of the evidence, that the employer did not in fact receive the Notice of Wage Transfer in a timely manner or that the employer was denied a reasonable opportunity to file a protest by the December 24, 2018 protest deadline. The reliability of the employer's recollection is further strained by the employer's assertion that the employer also did not receive the quarterly Statement of Charges that was mailed to the employer on May 9, 2019. The odds of one of the mailings not making it to the employer's post office box are slim. The odds of two mailings regarding the same claim and spaced months apart not making it to the employer's post office box are even slimmer. The weight of the evidence establishes that the August 9, 2019, Statement of Charges was not the employer's first notice of the employer's liability in connection with the December 9, 2018 Ohio combined wage claim. The weight of the evidence establishes an August 16, 2019 untimely protest from the December 14, 2018 Notice of Wage Transfer as well as an August 16, 2019 untimely appeal from the May 9, 2019 quarterly Statement of Charges. Based on those conclusions, the employer's appeal from the August 9, 2019 quarterly Statement of Charges may not be considered. The employer remains subject to charges to its account in connection with the December 9, 2018 Ohio combined wage claim.

**DECISION:**

The employer's protest from the December 14, 2018 Notice of Wage Transfer was untimely. The employer's appeal from the May 9, 2019 quarterly Statement of Charges was untimely. The employer's appeal from the August 9, 2019 quarterly Statement of Charges may not be considered. The employer remains subject to charges to its account in connection with the December 9, 2018 Ohio combined wage claim.

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James E. Timberland  
Administrative Law Judge

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Decision Dated and Mailed

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