

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

KELLY R VOGES
Claimant

IAFIT MANAGEMENT LLC
Employer

APPEAL 24A-UI-07888-PT-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 03/24/24
Claimant: Respondent (1)**

Iowa Code § 96.6(2) – Timeliness of Protest

Iowa Code § 96.7(2)a(6) – Appeal from the Statement of Charges

STATEMENT OF THE CASE:

On September 4, 2024, the employer, IAFit Management LLC, filed an appeal from the statement of charges dated August 9, 2024, which listed benefit charge information for the second quarter of 2024. Pursuant to due notice, a telephone hearing was held on September 23, 2024. The claimant, Kelly Voges, participated personally. The employer participated through Owner Nichole Geesey. The administrative law judge took official notice of the claimant's unemployment insurance benefits records including the notice of claim.

ISSUES:

Was the employer's protest timely?

Was the employer's appeal from the statement of charges timely?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The employer established a SIDES account on January 9, 2024, for the purpose of receiving electronic notice of unemployment insurance claims. The claimant filed an initial claim for unemployment insurance benefits effective March 24, 2024. On March 29, 2024, Iowa Workforce Development (IWD) issued a notice of claim to the employer via SIDES and sent the email alert to the email address designated by the employer. The email message stated that a notice of claim had been posted to the employer's SIDES account and that the deadline for responding to the notice of claim was April 8, 2024. However, the email address the employer provided to IWD to receive unemployment insurance notices was no longer active. The employer did not update the email address in the SIDES system. The employer did not file a protest response to the notice of claim.

On August 9, 2024, IWD mailed a statement of charges that included a \$6,886 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. The statement of charges stated that if the employer had not previously received an initial notice of claim and wished to appeal the claimant's eligibility for benefits, the employer had 30 days from the mailing date of

the statement of charges to file an appeal. The employer electronically filed its appeal of that statement of charges on September 4, 2024.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes:

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 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 r. 871-26.4 provides, in relevant part:

2. An appeal from an initial decision concerning the allowance or denial of benefits shall be filed, by mail, facsimile, or e-mail, online, or in person, not later than ten calendar days, as determined by the postmark or the date stamp after the decision was mailed to the party at its last-known address and shall state the following:
 - a. The name, address and social security number of the claimant;
 - b. A reference to the decision from which appeal is taken; and,
 - c. The grounds upon which the appeal is based.
3. 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.

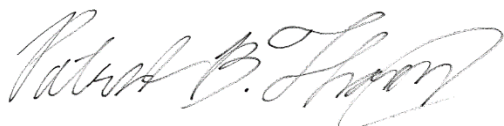
Iowa Code section 96.6(2) addresses the timeliness of an appeal from a representative's decision and states that an appeal must be filed within ten days after the date the decision was mailed to the parties. In addressing an issue of timeliness of an appeal, the Iowa Supreme Court concluded that when a statute creates a right to appeal and limits the time for appealing, compliance with the time limit is mandatory and jurisdictional. *Beardslee v. IDJS*, 276 N.W.2d. 373 (Iowa 1979).

This reasoning should also apply to the time limit for filing a protest after a notice of claim has been sent to the employer. The failure to file a timely protest in this case was not due to any Agency error or misinformation or delay or other action on the United States Postal Service, which under Iowa Administrative Code 871-24.35(2) would excuse the delay in filing the protest. Here, the employer failed to file a protest within the time period prescribed by Iowa Code section 96.6(2) when it failed to update its email address on SIDES. Because the protest was untimely, there is no jurisdiction to make a decision regarding the claimant's eligibility for benefits or chargeability of the employer's account. *Id.*; *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

An employer is only allowed to appeal to the department for a hearing to determine the eligibility of an individual to receive benefits if they were not previously notified pursuant to Iowa Code section 96.6(2) of the notice of claim. In this case, the employer was emailed a notice of claim via SIDES on March 29, 2024, and given an opportunity to respond, which it failed to do. As such, the conditions for appealing the statement of charges under Iowa Code section 96.7(2)a(6) have not been met. The charges will remain in effect.

DECISION:

The August 9, 2024, statement of charges for the second quarter of 2024 is affirmed. The employer failed to file a timely protest of the notice of claim. The employer has not met the conditions for appealing the statement of charges under Iowa Code section 96.7(2)a(6).



Patrick B. Thomas
Administrative Law Judge

September 25, 2024
Decision Dated and Mailed

PBT/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:

**Iowa Employment Appeal Board
6200 Park Avenue 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> or by contacting the District Court Clerk of Court <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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:

**Iowa Employment Appeal Board
6200 Park Avenue 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 adquiera firmeza. Puede encontrar información adicional sobre cómo presentar una petición en el Código de Iowa §17A.19, que se encuentra en línea en <https://www.legis.iowa.gov/docs/code/17A.19.pdf> o comunicándose con el Tribunal de Distrito Secretario del tribunal <https://www.iowacourts.gov/iowa-courts/court-directory/>.

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.