**Section 2725.120 Application For Cancellation Of Benefit Charges Due To Lack Of Notice**

a) An Application for Cancellation of Benefit Charges due to lack of notice made pursuant to Section 1508.1 of the Act shall be sufficient only if the following requirements are met:

1) The employer has also filed a timely and sufficient Application for Revision of Statement of Benefit Charges, as provided in Section 2725.100; and

2) The employer specifically alleges in its Application for Cancellation of Benefit Charges that the Agency did not issue one or more of the following Notices within the required time period:

A) A "Notice to Last Employer, Last Employing Unit or Other Interested Party," (See 56 Ill. Adm. Code 2720.130(a)(1)) within 180 days after the date of the initial Finding; or

B) A "Notice of Determination" (BEN-134) (See 56 Ill. Adm. Code 2720.140(a)) under Section 702 of the Act within 180 days after the employer's timely "Notice of Possible Ineligibility" (BIS-22) or letter in lieu thereof (see 56 Ill. Adm. Code 2720.130), or, in the case of a remanded Decision regarding the sufficiency of the employer's protest under Section 702 of the Act, within 180 days after the remanded Decision; or

C) In the case of a "Notice of Determination" (BEN-134) issued under Section 702 of the Act, in which an issue was not adjudicated at the time of the employer's timely "Notice of Possible Ineligibility" (BIS-22) or letter in lieu thereof, because of the individual's failure to file a claim for a week of benefits, within 180 days after the date on which the individual first files a claim for a week of benefits; or

D) A "Notice of Reconsideration of Findings" or "Notice of Reconsideration of Determination" (BEN-134), within 180 days after the date of reconsideration; or

E) A "Notice of Referee's Decision" (See 56 Ill. Adm. Code 2720.270), which allows benefits within 180 days after the date that the appeal was received by the Agency; or

F) Under Section 604 of the Act, a "Notice of Director's Decision" within 180 days after the date of the report and Recommended Decision of the Director's Representative; or

G) With respect to the notice of a decision that the employer is a chargeable employer, pursuant to 56 Ill. Adm. Code 2765, within 180 days after the employer's protest or appeal of such a decision.

b) A citation to Section 1508.1 of the Act or this Section of the Rules need not be made in the Application, nor is it necessary to specifically allege the failure of the Agency to act within 180 days.

Example: The employer meets the requirements of subsection (a)(1) and alleges that the Agency failed to respond to its timely "Notice of Possible Ineligibility" (BIS-22) or letter in lieu thereof by issuing a "Notice of Determination" (BEN-134). If the Agency finds that the allegations contained in the employer's Application for Cancellation of Benefit Charges are true, and 180 days have elapsed since the employer's "Notice of Possible Ineligibility" (BIS-22) or letter in lieu thereof, then the benefit charges in question will be cancelled.

c) The Application for Cancellation of Benefit Charges can be made a part of an Application for Revision of Statement of Benefit Charges provided that the requirements of subsection (a)(2) are satisfied.

d) An Application for Cancellation of Benefit Charges will be denied if an Application for Revision of Statement of Benefit Charges regarding the same benefit charges and based on the same allegation has already been denied.

e) The cancellation of benefit charges will be allowed if it is proven by the employer that:

1) The employer meets the definition of a "party" under 56 Ill. Adm. Code 2720.1; and

2) The Agency failed to issue one or more of the "Notices", as set forth in subsection (a)(2); and

3) The employer has satisfied the requirements of Section 1508 of the Act; and

4) The Agency's actions directly resulted in the payment of benefits to an individual and hence caused benefit charges in accordance with the provisions of Sections 1501, 1501.1, 1502 and 1502.1 of the Act. For the purposes of this Section, the Agency's actions "directly resulted" in the payment of benefits where the Agency fails to respond to a timely, where required, notice from an employer within the time limits set in subsection (a)(2).

Example 1: The employer files a late appeal to the Referee (after expiration of the 30 day appeal period set forth by Section 800 of the Act). Even if the Agency fails to rule on the employer's appeal within 180 days from the date the appeal is filed, the employer's benefit charges will not be cancelled, as the Agency's failure to rule on an issue over which the Referee has no jurisdiction cannot "directly result" in the payment of benefits. This result would be different if the employer proves that its appeal was filed in a timely manner.

Example 2: The employer files a timely "Notice of Possible Ineligibility" (BIS-22) or letter in lieu thereof to which the Agency makes no response within 180 days. Even if the claimant is found to be eligible for benefits, these benefit charges will be subject to cancellation if the other requirements of this Section are met.

f) All of the provisions of Section 1508 of the Act and Section 2725.100 of this Part, applicable to Applications for Revision of Statements of Benefit Charges and not inconsistent with the provisions of Section 1508.1 of the Act and this Section, shall apply to Applications for Cancellation of Benefit Charges under Section 1508.1 of the Act.

Example: The employer must file its timely Application for Revision of Statement of Benefit Charges in response to a Statement of Benefit Charges. If any benefit charges are allowed by the employer to become final, it cannot later request that the benefit charges be cancelled due to its subsequently meeting the requirements of Section 1508.1 of the Act.

(Source: Amended at 20 Ill. Reg. 6378, effective April 29, 1996)