**Section 2765.335 Procedural Requirements And Right Of Appeal**

a) Whenever, pursuant to Section 701 of the Act, the claims adjudicator decides that an employer is the "last employer" of an individual (employer subject to benefit charges or payments in lieu of contributions) as provided in this Subpart, or, pursuant to Section 706 of the Act, decides that charges must be assessed against the employer pursuant to Section 2765.336 for benefits for which a claimant was ultimately determined to be ineligible, the claims adjudicator shall promptly notify the employer of this decision. A decision that an employer is the "last employer" of an individual shall apply to the week beginning with the effective date of the claim and each week thereafter until the claims adjudicator finds that the individual is no longer unemployed.

EXAMPLE: An individual files a claim with a benefit year beginning January 10, 1993, and Company A is notified that it is the "last employer". The employer fails to file a timely request for reconsideration of this decision. The individual is then paid benefits for the period from January 10, 1993 through January 30, 1993. Company A is the chargeable employer for this period. The individual returns to work for Company A and earns over his weekly benefit amount for the week ending February 6, 1993. He is then laid off of work and files an additional claim beginning February 7, 1993. Company A is notified that it is the "last employer" with respect to this claim. Company A can file a timely request for reconsideration of this decision. However, this request will affect only weeks after February 6, 1993.

b) If the employer disagrees with the decision of the claims adjudicator that it is the "last employer", or that charges must be assessed against the employer pursuant to Section 2765.336, the employer must file a written request for reconsideration of this decision within 10 days after the date of mailing of the decision.

c) A request for reconsideration of the decision of the claims adjudicator must comply with the requirements of 56 Ill. Adm. Code 2720.130. In the case of a decision that the employer is the last employer of the individual, the request shall specify the full name and social security number of the individual and the reasons why the employer believes that it is not the chargeable employer under this Subpart. The employer may not allege the misapplication of Section 2765.336 with respect to any claim that was part of the basis for charges assessed against an employer pursuant to that Section, if the claim was the basis of a previous decision that assessed charges against the employer pursuant to Section 2765.336 and that decision has become legally final. An employer's request for reconsideration of a decision issued pursuant to Section 706 may not challenge a legally final determination or decision that the employer failed to file a timely and sufficient protest for purposes of Section 2765.336.

EXAMPLE 1: Employer X receives a decision that charges must be assessed against Employer X for benefits paid to Claimant A even though Claimant A was finally determined to be ineligible for those benefits. Employer X files a timely request for reconsideration of that decision. It will be Employer X's burden to show that Section 2765.336 does not apply to the charges for Claimant A's benefits. However, the request may not challenge a legally final determination or decision that Employer X failed to file a timely and sufficient protest for purposes of Section 2765.336.

EXAMPLE 2: Employer X receives a Notice of Claim indicating that Claimant A has filed a claim for benefits. Employer X does not file a timely protest of the claim. The Department issues a determination, allowing A's claim, and A receives benefits during October 2021. That same month, X sends the Department information, indicating that it had discharged A for misconduct. In November 2021, the Department issues a reconsidered determination, denying A's claim. A does not appeal, and the reconsidered determination becomes legally final. According to Department records, during 2021, there were 4 prior claims with respect to which: X was the last chargeable employer; the Department had properly notified X; the Department initially paid benefits due to X's failure to file a timely and sufficient protest pursuant to Section 2720.130; and the Department ultimately issued a reconsidered determination denying benefits, with the reconsidered determination becoming legally final. Employer X receives a decision that charges must be assessed against Employer X for benefits paid to Claimant A even though Claimant A was finally determined to be ineligible for those benefits. The decision notes the four prior claims that caused X to remain chargeable for the benefits that were paid to A. To be relieved of the charges for A's benefits, X must file a timely request for reconsideration of the decision. It will be Employer X's burden to show that Section 2765.336 does not apply to the charges for Claimant A's benefits. However, the request may not challenge a legally final determination or decision that Employer X failed to file a timely and sufficient protest for purposes of Section 2765.336.

EXAMPLE 3: Employer X receives a Notice of Claim, indicating that Claimant A has filed a claim for benefits. Employer X does not file a timely protest of the claim. The Department issues a determination, allowing A's claim, and A receives benefits during September 2021. That same month, X sends the Department information indicating that it had discharged A for misconduct. In October 2021, the Department issues a reconsidered determination, denying A's claim. A does not appeal, and the reconsidered determination becomes legally final. According to Department records, during 2021, there were 4 prior claims with respect to which: X was the last chargeable employer; the Department had properly notified X; the Department initially paid benefits due to X's failure to file a timely and sufficient protest pursuant to Section 2720.130; and the Department ultimately issued a reconsidered determination denying benefits, with the reconsidered determination becoming legally final. Employer X receives a decision that charges must be assessed against Employer X for benefits paid to Claimant A even though Claimant A was finally determined to be ineligible for those benefits. The decision notes the four prior claims that caused X to remain chargeable for the benefits that were paid to A. X does not file a request for reconsideration, and the decision becomes legally final. In November 2021, Employer X receives a Notice of Claim indicating that Claimant B has filed a claim for benefits. Employer X does not file a timely protest of the claim. The Department issues a determination, allowing B's claim, and B receives benefits during November 2021. That same month, X sends the Department information, indicating that it had discharged B for misconduct. In December 2021, the Department issues a reconsidered determination, denying B's claim. B does not appeal, and the reconsidered determination becomes legally final. Employer X receives a decision that charges must be assessed against Employer X for benefits paid to Claimant B even though Claimant B was finally determined to be ineligible for those benefits. The decision notes the five prior claims that caused X to remain chargeable for the benefits that were paid to B. X may not allege the misapplication of Section 2765.336 with respect to any of the five prior claims because each was part of the basis for charges assessed against X pursuant to Section 2765.336 for benefits for which a claimant was ultimately determined to be ineligible, and the decision assessing the charges became legally final.

d) After reviewing the allegations of the employer and any other relevant facts in the record, the claims adjudicator shall issue a reconsidered decision. If the employer disagrees with the reconsidered decision of the claims adjudicator, the employer must file a written appeal of the reconsidered decision within 30 days after the date of mailing of the reconsidered decision or the reconsidered decision will become final.

e) An Application made pursuant to Section 1508 of the Act and 56 Ill. Adm. Code 2725.100 regarding revision of the Statement of Benefit Charges, that includes benefit charges the employer believes are incorrect because it is not the chargeable employer shall be sufficient only if the Application contains a reference to, and a copy of, the decision that reverses the claims adjudicator and holds that the employer is not the chargeable employer and that the employer is not subject to charges for the claim pursuant to Section 2765.336. These same requirements must be met by an employer that is questioning payments in lieu of contributions on its Statement of Amount Due for Benefits Paid.

f) Unless the employer has filed a timely request for reconsideration of the decision that the claims adjudicator has found it to be the chargeable employer, or of the decision that charges must be assessed against the employer pursuant to Section 2765.336, as the case may be, the employer shall not be entitled to a revision of its Statement of Benefit Charges under 56 Ill. Adm. Code 2725.100, nor shall it be entitled to a revision of the amounts shown on its Statement of Amount Due for Benefits Paid for payments in lieu of contributions.

EXAMPLE: Employer A is notified that it is the chargeable employer with respect to a claim for unemployment insurance benefits within a benefit year beginning on or after January 1, 1993. The employer does not request reconsideration of this decision. Several weeks later, this employer is served with its Statement of Benefit Charges for the weeks paid to this individual. At this time, the employer requests a revision of the Statement on the grounds that this individual did not perform services for it for 30 days prior to the beginning of the weeks for which it is being charged. The employer shall not be entitled to a revision of these charges because it failed to file a timely request for reconsideration of the initial decision that it was the chargeable employer.

g) Appeals of decisions under this Section shall be filed with the local office where the original decision was made.

h) The conduct of the hearing shall be the same as that provided under Section 2200 of the Act and 56 Ill. Adm. Code 2725.

(Source: Amended at 44 Ill. Reg. 8234, effective April 28, 2020)