**Section 2765.336 Non-Cancellation of Benefit Charges Due to Employer's Pattern of Failing to Respond Timely and Adequately**

a) For purposes of Section 706 of the Act, if benefits are paid pursuant to a finding or determination, or a reconsidered finding or determination, that is finally reversed or modified in subsequent proceedings, the benefit charges, for purposes set forth in Section 1502.1 of the Act, shall be treated in the same manner as if the reversal or modification had not occurred if:

1) The employer was the last employer with respect to the claim at issue;

2) The employer was properly notified with respect to the claim at issue;

3) The finding or determination, or reconsidered finding or determination, was attributable to the employer's failure to file a sufficient protest within the time required by 56 Ill. Adm. Code 2720.130(a)(1) or (d)(3), whichever is applicable; and

4) During the same calendar year, there were at least 4 prior benefit claims with respect to which:

A) subsections (a)(1), (2) and (3) applied with respect to the employer; and

B) benefits were paid, and the finding, determination or reconsidered finding or determination under which benefits were paid was finally reversed or modified in subsequent proceedings.

EXAMPLE: The employer fails to file a timely and sufficient protest when notified initially that the claimant has filed a claim for benefits and does not preserve party status. The claimant receives benefits. When the employer receives its quarterly Statement of Benefit Charges, it raises a question regarding the claimant's eligibility for benefits. Upon investigation, the claims adjudicator determines the claimant to be ineligible for benefits and establishes an overpayment for the entire amount of the benefits paid to the claimant. The overpayment becomes legally final. The employer's charges for this claimant's benefits will not be cancelled if, within the same calendar year, there were at least four other cases to which subsections (a)(4)(A) and (B) apply.

b) For purposes of subsection (a)(3), with respect to a claim in which benefits are initially paid pursuant to a finding or determination, or a reconsidered finding or determination, the timing of the protest shall be determined without regard to 56 Ill. Adm. Code 2720.130(e) if the finding or determination, or the reconsidered finding or determination, was attributable to the employer's failure to initially submit a sufficient protest.

c) Only claims filed on or after April 1, 2020 shall be considered for purposes of subsection (a).

d) The applicability of this Section shall be based on the date of the reconsidered finding or determination, or decision of a Referee, the Board of Review or a court that finally reverses the finding or determination, or the reconsidered finding or determination, pursuant to which benefits were paid with respect to the claim.

EXAMPLE: The employer fails to file a timely and sufficient protest when notified initially that the claimant has filed a claim for benefits and does not preserve party status. A separation issue is detected on the claim application. The claims adjudicator mails out an "Allow" determination. The claimant collects benefits for several weeks. The employer then submits a request for reconsideration and appeal. On December 3, 2020, the claims adjudicator mails out a "Deny" reconsidered determination. The claimant does not submit a request for reconsideration and appeal. The reconsidered determination becomes final on January 4, 2021. The application of this Section will be based on the date of the reconsidered determination, December 3, 2020, and not the date when the reconsidered determination became final on January 4, 2021.

e) This Section will apply regardless of whether the employer has contracted with one or more attorneys or other representatives for representation in connection with benefit claims.

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