

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

WILLIAM S MCFARLAND
Claimant

APPEAL NO. 20A-UI-00795-B2T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE DEVELOPMENT
DEPARTMENT**

OC: 12/29/19
Claimant: Appellant (1)

871 IAC 24.9(1)B – Cancellation of Claim
Iowa Code § 96.6-2 – Timeliness of Appeal

STATEMENT OF THE CASE:

Claimant filed an appeal from a decision of a representative dated January 14, 2020, reference 03, which held claimant ineligible to cancel a claim for unemployment insurance benefits. After due notice, a telephone conference hearing was scheduled for and held on February 12, 2020. Claimant participated personally.

ISSUES:

Whether the appeal is timely?

Whether the claim should be cancelled?

FINDINGS OF FACT:

The administrative law judge, having heard the testimony and considered all of the evidence in the record, finds: Claimant filed a claim effective December 29, 2019. Claimant was sent notice by Workforce Development of the weekly benefit rate, \$77.00. Claimant was unable to collect unemployment at that time due to claimant being called back to work for a few days and attending to other matters. Claimant did not file his request to cancel the claim until January 13, 2020 when he was told by an IWD official that his rate would have been increased if he'd filed after January 1, 2020. Claimant would receive a higher benefit rate if the claim were cancelled.

Claimant lives in an extended stay motel. At times he receives his mail and at times he has to go to general delivery to pick up the mail which may be delayed. Claimant stated that he did not find out about his denial of his request to cancel his claim until January 27, 2020, and he went to IWD to file the appeal the next day.

Claimant filed his original claim on December 29, 2019, the same day he was told that there would be a layoff and employer would not object to filing an unemployment claim. Then, a few days' later claimant went back to work for a couple of days and attended to other matters for a few days. Claimant went to the IWD office on or around January 13, 2020. At that time, it was

told to him that if he'd filed on January 1, 2020 rather than December 29, 2019 date when he filed his original claim he would have been eligible for a higher weekly benefit amount. Claimant then requested to cancel his claim to refile.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code section 96.6(2) provides, in pertinent part:

The representative shall promptly examine the claim and any protest, take the initiative to ascertain relevant information concerning the claim, and, on the basis of the facts found by the representative, shall determine whether or not the claim is valid, the week with respect to which benefits shall commence, the weekly benefit amount payable and its maximum duration, and whether any disqualification shall be imposed. . . . Unless the claimant or other interested party, after notification or within ten calendar days after notification was mailed to the claimant's last known address, files an appeal from the decision, the decision is final and benefits shall be paid or denied in accordance with the decision.

The ten calendar days for appeal begin running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Board of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976).

Pursuant to rules Iowa Admin. Code r. 871-26.2(96)(1) and Iowa Admin. Code r. 871-24.35(96)(1), appeals are considered filed when postmarked, if mailed. *Messina v. IDJS*, 341 N.W.2d 52 (Iowa 1983).

The record in this case shows that more than ten calendar days elapsed between the mailing date and the date this appeal was filed. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions within the time allotted by statute, and that the administrative law judge has no authority to change the decision of a representative if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979). Compliance with appeal notice provisions is jurisdictional unless the facts of a case show that the notice was invalid. *Beardslee v. IDJS*, 276 N.W.2d 373, 377 (Iowa 1979); see also *In re Appeal of Elliott*, 319 N.W.2d 244, 247 (Iowa 1982). The question in this case thus becomes whether the appellant was deprived of a reasonable opportunity to assert an appeal in a timely fashion. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The record shows that the appellant did not have a reasonable opportunity to file a timely appeal as his mail would bounce between a listed address and general delivery, often delaying its arrival.

The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to Iowa Admin. Code r. 871-24.35(2). The administrative law judge further concludes that the appeal was therefore timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge retains jurisdiction to make a determination with respect to the nature of the appeal. See, *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979).

871 IAC 24.9(1)b

Monetary Determinations:

b. The monetary record shall constitute a final decision unless newly discovered facts which affect the validity of the original determination or a written request for reconsideration is filed by the individual within ten days of the date of the mailing of the monetary record specifying the grounds of objection to the monetary record.

Iowa Admin. Code r. 871-24.2(4)c provides:

Cancellation of unemployment insurance claim.

c. Cancellation requests within the ten-day protest period. The benefits bureau, upon review of the timely request and before payment is made, may cancel the claim for the following reasons:

- (1) The individual found employment or returned to regular employment within the protest period.
- (2) Cancellation would allow the individual to refile at the change of a calendar quarter to obtain an increase in the weekly or maximum benefit amount or the individual would receive more entitlement from another state.
- (3) The individual filed a claim in good faith under the assumption of being separated and no actual separation occurred.
- (4) The individual did not want to establish a benefit year because of eligibility for a low weekly or maximum benefit amount.

The administrative law judge holds claimant not eligible to cancel the claim. Claimant had ten days to cancel the claim but waited almost two weeks to do so. Claimant's request to cancel the claim is untimely. Claimant's request is therefore denied.

DECISION:

The decision of the representative dated January 14, 2020, reference 03, is affirmed. Although claimant was deemed to have filed a timely appeal in this matter, his request to cancel his claim was untimely. Claimant's request to cancel the claim is denied.

Blair A. Bennett
Administrative Law Judge

Decision Dated and Mailed

bab/scn