

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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**DANIEL SOLIS**  
Claimant

**APPEAL 17A-UI-13082-SC-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**IOWA WORKFORCE DEVELOPMENT  
DEPARTMENT**

**OC: 10/15/17  
Claimant: Appellant (1R)**

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Iowa Code § 96.3(4) – Determination of Benefits  
Iowa Admin. Code r. 871-24.9(1)b – Monetary Determination – Timeliness  
Iowa Code § 96.6(2) – Timeliness of Appeal

**STATEMENT OF THE CASE:**

Daniel Solis (claimant) appealed from the October 18, 2017, corrected monetary record. After due notice was issued, a hearing was held by telephone conference call on January 11, 2018. The claimant participated. Spanish interpretation was provided by Paloma (employee number 11274) from CTS Language Link. The Claimant's Exhibit A was received. The administrative law judge took official notice of the administrative record.

**ISSUE:**

Is the claimant's appeal from the monetary determination timely?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: A corrected monetary record was mailed to the claimant's last known address of record on October 18, 2017. The claimant received the record. The record contained a warning that an appeal must be postmarked or received by the Appeals Bureau within ten days of the date of mailing. The claimant was not monetarily eligible based solely on the wages from his Iowa employer, Monsanto. The administrative record shows a comment in the claimant's database readout (DBRO) that he has no wages showing in Wisconsin.

The administrative record shows the claimant had discussions with Iowa Workforce Development (IWD) in November 2017, regarding wages he earned in Wisconsin. He was not instructed to file an appeal but directed to submit pay stubs for the wages earned. According to the administrative record, on November 22, 2017, the pay stubs were received by IWD.

In December 2017, the claimant contacted IWD again. He was again directed to submit copies of his pay stubs, which he did on December 19, 2017. However, the pay stubs were sent to the Appeals Bureau and not the Benefits Bureau. The pay stubs were accepted as an appeal as there was no cover sheet and the issue was scheduled for a hearing. The hearing notice, which

indicated the issues for hearing include whether the claimant's monetary determination is correct and if a timely appeal was filed, was mailed to the claimant on December 22, 2017. The day before, the Benefits Bureau issued another monetary record regarding the claimant's alternate base period finding he was still not monetarily eligible based solely on his Iowa wages.

The claimant began working for McKay Nursery Company located at 750 S Monroe Street in Waterloo, Wisconsin on or about March 27, 2017. The pay stubs show that through June 24, 2017, he earned gross wages in the amount of \$5,320.00. (Exhibit A). Federal and state taxes were withheld from his wages.

### **REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge finds the claimant's appeal to the monetary record to be timely. The issue of whether the claimant earned insured wages from McKay Nursery Company located at 750 S Monroe Street in Waterloo, Wisconsin between March 27, 2017 and June 24, 2017 is remanded for a wage investigation.

Iowa Code section 96.6(2) provides:

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. 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. The claimant has the burden of proving that the claimant meets the basic eligibility conditions of section 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to section 96.5, except as provided by this subsection. The claimant has the initial burden to produce evidence showing that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to section 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving section 96.5, subsection 1, paragraphs "a" through "h". 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. If an administrative law judge affirms a decision of the representative, or the appeal board affirms a decision of the administrative law judge allowing benefits, the benefits shall be paid regardless of any appeal which is thereafter taken, but if the decision is finally reversed, no employer's account shall be charged with benefits so paid and this relief from charges shall apply to both contributory and reimbursable employers, notwithstanding section 96.8, subsection 5.

Iowa Code section 96.3(4) provides:

4. Determination of benefits. With respect to benefit years beginning on or after July 1, 1983, an eligible individual's weekly benefit amount for a week of total

unemployment shall be an amount equal to the following fractions of the individual's total wages in insured work paid during that quarter of the individual's base period in which such total wages were highest; the director shall determine annually a maximum weekly benefit amount equal to the following percentages, to vary with the number of dependents, of the statewide average weekly wage paid to employees in insured work which shall be effective the first day of the first full week in July:

If the number of dependents is:	The weekly benefit amount shall equal the following fraction of high quarter wages:	Subject to the following maximum percentage of the statewide average weekly wage:
0	1/23	53%
1	1/22	55%
2	1/21	57%
3	1/20	60%
4 or more	1/19	65%

The maximum weekly benefit amount, if not a multiple of one dollar shall be rounded to the lower multiple of one dollar. However, until such time as sixty-five percent of the statewide average weekly wage exceeds one hundred ninety dollars, the maximum weekly benefit amounts shall be determined using the statewide average weekly wage computed on the basis of wages reported for calendar year 1981. As used in this section "*dependent*" means dependent as defined in section 422.12, subsection 1, paragraph "a", as if the individual claimant was a taxpayer, except that an individual claimant's nonworking spouse shall be deemed to be a dependent under this section. "*Nonworking spouse*" means a spouse who does not earn more than one hundred twenty dollars in gross wages in one week.

Iowa Admin. Code r. 871-24.9(1)b provides:

Determination of benefit rights.

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.

The ten calendar days for appeal begins 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). This would apply to the date of the monetary record as well.

The record in this case shows that more than ten calendar days elapsed between the mailing date of the first monetary record on October 18, 2017 and the date this appeal was filed on December 19, 2017. The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from determinations 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973).

The claimant was in contact with IWD regarding wages from another state since receiving his first monetary record. He was not advised to file an appeal, but the IWD representatives continued to work with him. Information intended for the Benefits Bureau to resolve the out-of-state wage issue was submitted to the Appeals Bureau and accepted as an appeal. The claimant then received a second monetary record on or around the same date as he received a hearing notice showing an appeal hearing based his monetary record. The claimant's appeal of his monetary records will be accepted as timely due to agency confusion and error.

The issue of whether the claimant earned insured wages from McKay Nursery Company located at 750 S Monroe Street in Waterloo, Wisconsin between March 27, 2017 and June 24, 2017 is remanded for a wage investigation.

**DECISION:**

The appeal in this case was timely filed due to agency error and confusion. The October 18, 2017 monetary record is affirmed based on the information available at this time as the claimant and state of Wisconsin have conflicting information about whether he earned insured wages. Once the wage investigation is concluded, the agency shall issue a new monetary record.

**REMAND:**

The issue of whether the claimant earned insured wages from McKay Nursery Company located at 750 S Monroe Street in Waterloo, Wisconsin between March 27, 2017 and June 24, 2017 as delineated in the Claimant's Exhibit A is remanded for a wage investigation.

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Stephanie R. Callahan  
Administrative Law Judge

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Decision Dated and Mailed

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