

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

ALENA K MCSORLEY
Claimant

APPEAL 16A-UI-07309-CL-T

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

OC: 05/08/16
Claimant: Appellant (2R)

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:

The claimant filed an appeal from the May 16, 2016 monetary record and determination that found a lack of qualified earnings. After due notice was issued, a telephone conference hearing was held on July 21, 2016. Claimant's Exhibit A was received.

ISSUES:

Did the claimant timely appeal the monetary determination?
Is the claimant's monetary determination correct?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The monetary record was mailed to the claimant's last-known address of record on May 16, 2016. The claimant received the record on June 8, 2016. The record contained a warning that an appeal must be postmarked or received by the Appeals Section within ten days of the date of mailing. Claimant sent her appeal on June 18, 2016. However, the appeal was postmarked on June 29, 2016, which is after the expiration of the ten-day appeal period. Claimant has been having issues with her mail recently.

The base period for the claim year effective May 8, 2016, covers the four quarters of 2015. Claimant presented evidence of wages in the third and fourth quarters of 2015. (Claimant's Exhibit A)

REASONING AND CONCLUSIONS OF LAW:

The first issue is whether claimant's appeal is timely. The administrative law judge concludes it is.

Iowa Code § 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.

Iowa Admin. Code r. 871-24.9(1)b provides: Determination of benefit rights.

24.9(1) 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 claimant did not have an opportunity to appeal the monetary determination because it was not received in a timely fashion. Without timely notice of a disqualification, no meaningful opportunity for appeal exists. See *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal within ten days of receipt of the monetary determination. Therefore, the appeal shall be accepted as timely.

For the reasons that follow, the administrative law judge concludes the monetary record is not correct.

Iowa Code section 96.4(4) provides:

An unemployed individual shall be eligible to receive benefits with respect to any week only if the department finds that:

4. The individual has been paid wages for insured work during the individual's base period in an amount at least one and one-quarter times the wages paid to the individual during that quarter of the individual's base period in which the individual's wages were highest; provided that the individual has been paid wages for insured work totaling at least three and five-tenths percent of the statewide average annual wage for insured work, computed for the preceding calendar year if the individual's benefit year begins on or after the first full week in July and computed for the second preceding calendar year if the individual's benefit year begins before the first full week in July, in that calendar quarter in the individual's base period in which the individual's wages were highest, and the individual has been paid wages for insured work totaling at least one-half of the amount of wages required under this subsection in the calendar quarter of the base period in which the individual's wages were highest, in a calendar quarter in the individual's base period other than the calendar quarter in which the individual's wages were highest. The calendar quarter wage requirements shall be rounded to the nearest multiple of ten dollars.

If the individual has drawn benefits in any benefit year, the individual must during or subsequent to that year, work in and be paid wages for insured work totaling at least two hundred fifty dollars, as a condition to receive benefits in the next benefit year.

Iowa Admin. Code r. 871-24.1(11) provides:

Base period. The period of time in which the amount of wages paid to an individual in insured work which determines an individual's eligibility for, and the amount and duration of, benefits. The base period consists of the first four of the last five completed calendar quarters immediately preceding the calendar quarter in which the individual's claim for benefits is effective with the following exception. The department shall exclude three or more calendar quarters from the individual's base period in which the individual received workers' compensation or indemnity insurance benefits and substitute consecutive calendar quarters immediately preceding the base period in which the individual did not receive workers' compensation or indemnity insurance benefits. This exception applies under the following conditions:

- a. The individual did not work in and receive wages from insured work for three calendar quarters of the base period, or
- b. The individual did not work in and receive wages from insured work for two calendar quarters and lacked qualifying wages from insured work to establish a valid claim for benefits during another quarter of the base period.

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 "c", 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.

Since the wages in the third and fourth quarters of 2015, in the May 16, 2016, monetary redetermination were not reported as of the time of the claim and hearing, those wages must be recorded. The employer shall be notified of the claim and shall have the opportunity to protest payment of benefits.

DECISION:

The May 16, 2016, monetary determination is reversed. The wages as presented by the claimant from paystubs shall be added to the base period wages and the claim shall be redetermined accordingly. The employer shall be notified of the claim and shall have the opportunity to protest payment of benefits. Claimant's eligibility for a combined wage claim shall be redetermined.

REMAND:

The unrecorded wage issue delineated in the findings of fact is remanded to the tax section of Iowa Workforce Development for addition of the wages according to the evidence contained in Claimant's Exhibit A.

Christine A. Louis
Administrative Law Judge
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Decision Dated and Mailed

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