

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

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Robert Herbers  
14060 Emiline St  
Omaha, NE 68138-6259,

Claimant.

**DIA APPEAL NO. 20IWD0019  
IWD APPEAL NO. 20A-UI-02060**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**APPEAL RIGHTS:**

**This Decision Shall Become Final**, unless within fifteen (15) days from the mailing date below the administrative law judge's signature on the last page of the decision, you or any interested party:

Appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to:

**Employment Appeal Board  
4<sup>th</sup> Floor – Lucas Building  
Des Moines, Iowa 50319  
or  
Fax (515)281-7191**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

**AN APPEAL TO THE BOARD SHALL STATE CLEARLY:**

The name, address and social security number of the claimant.

A reference to the decision from which the appeal is taken.

That an appeal from such decision is being made and such appeal is signed.

The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

**SERVICE INFORMATION:**

A true and correct copy of this decision was mailed to each of the parties listed.

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UNEMPLOYMENT INSURANCE APPEALS BUREAU**

<p>Robert Herbers,  Claimant.</p>	<p>DIA Appeal No. 20IWD0019 IWD Appeal No. 20A-UI-02060</p> <p><b>ADMINISTRATIVE LAW JUDGE DECISION</b></p> <p style="text-align: right;">OC: 02/23/2020 Claimant: Appellant (1)</p>
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Iowa Code § 96.6(2) – Timeliness of Appeal  
Iowa Code § 96.4(4) – Monetary Eligibility  
Iowa Code § 96.3(4) – Determination of Benefits

**STATEMENT OF THE CASE:**

Claimant filed an appeal from the February 23, 2020, reference 00, decision that allowed some benefits. Pursuant to the agreement of Claimant, a hearing was held on March 30, 2020. Claimant did participate.

**ISSUES:**

Whether the appeal is timely?

Whether the monetary determination was correct?

Whether the claimant is monetarily eligible to receive benefits?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the Administrative Law Judge finds:

Iowa Workforce Development (“IWD”) issued a decision on February 23, 2020, finding Claimant was eligible to receive unemployment insurance benefits in the amount of \$360.00 a week. Administrative File, at p. 9. The identified base period started on October 1, 2018, and continued through September 30, 2019. Id. Claimant disagreed with the amount of the weekly benefits, and he attempted to file an appeal. Of note, IWD’s standard appeal language included in its decisions states: “The request for a UI appeal must be postmarked or received at IWD within 10 calendar days after the mailing date[.]”

According to Claimant, he wrote an appeal letter on or about February 27, 2020, and placed it in the mail. This is the date on the appeal letter IWD ultimately received. Id., at p. 5. Claimant, however, realized he forgot to include some documentation with the appeal letter, and he removed the letter from the mail. Thereafter, on March 4, 2020, he mailed the letter with the additional documentation. Id., at p. 7. This is the postmark date on the envelope IWD received containing the appeal letter and supporting information, and IWD received it on March 6, 2020. Id., at p. 5.

A hearing was scheduled, and at the hearing, Claimant revealed he sustained an injury at work on April 1, 2017. After this, he had a series of surgeries starting that April and continuing through 2019. Id. As a result of his surgeries, he began receiving less earnings due to him exhausting his paid time off and having to take more and more unpaid time off work. Claimant requests that the base period for determining his eligibility take account of his earnings prior to having to take so much unpaid leave or at least incorporate what his current earnings would be without unpaid time off.

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

An individual generally has ten days in which to file an appeal of an initial unemployment insurance benefits decision by IWD, with the relevant provision of law stating: “[u]nless 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 Code § 96.6(2). This includes initial monetary determinations, where IWD is tasked with first sending the claimant “a notification consisting of a statement of the individual’s weekly benefit amount, total benefits, base period wages, and other data pertinent to the individual’s benefit rights.” 871 Iowa Administrative Code (“I.A.C.”) § 24.9(1). The information in this notification becomes the final decision on the monetary record unless, among other things, “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.” Id. § 24.9(2).

A presumption exists IWD mailed a decision on the date listed on the decision “unless otherwise indicated by the facts,” and an individual is deemed to have filed the appeal on the date it was mailed “as shown by the postmark.” Id. § 24.35§ (1), (2). The Iowa Supreme Court has held that compliance with the appeal deadline is mandatory and jurisdiction unless the facts of a case show that the notice was invalid. Beardslee v. IDJS, 276 N.W.2d 373, 377 (Iowa 1979).

As for the base period, this is 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.” 871 I.A.C. § 24.1. “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[.]” Id. An exception exists for this general rule, with the governing regulatory provision stating:

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.

Id.

In this case, the two core issues are whether Claimant filed a timely appeal, and if so, should his base period for determining the amount of his benefits be shifted to a time he was not receiving a reduced salary due to his use of unpaid time off. Claimant does not challenge any other aspect of IWD’s decision, and on balance, IWD’s decision is correct.

Based solely on the record made, Claimant filed a timely appeal. The IWD decision under review is dated February 23, 2020. This is in accord with Claimant's understanding at the hearing and his appeal letter being dated February 27, 2020, and absent further evidence, this is the mailing date even though it is a Sunday. The postmark on the envelope Claimant mailed is March 4, 2020, which is in accord with him delaying the mailing and IWD receiving it two days later on March 6, 2020. A review of the calendar reveals March 4, 2020, is the tenth day after February 23, 2020. This is timely, and any claim that it is not because March 4, 2020, would be the eleventh day if February 23, 2020, is the first day belies the fact that the overarching statute states appeals are due "ten calendar days after notification was mailed," which would mean the mailing date is not included as one of the ten days. This is in accord with IWD's own notices, which states: "The request for a UI appeal must be postmarked or received at IWD within 10 calendar days after the mailing date[.]" As such, there is a timely appeal.

The record also reveals IWD correctly calculated Claimant's base period. Claimant filed for benefits in February of 2020, and as a result, his base period consists of his wages in the last quarter of 2018 and the first three of quarters of 2019 as these are 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[.]" Id. § 24.1. A review of IWD's decision revealed it used the wages in these quarters, and the exception for shifting base quarters due to receiving workers' compensation or indemnity insurance benefits does not apply in part because he did work and receive wages from insured work during this time. Id. While there is empathy for Claimant's position of wanting his base period moved to a time he did not use so much unpaid time off, the facts necessary to take advantage of the exception do not exist. There is no discretion, and as a result, IWD's action must be AFFIRMED.

#### **DECISION:**

The February 23, 2020, reference 00, decision is affirmed. The decision of Respondent remains in effect.

A handwritten signature in blue ink, appearing to read "Jonathan M. Gallagher", with a long, sweeping horizontal line extending to the right.

Jonathan M. Gallagher  
Administrative Law Judge

April 1, 2020

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Decision Dated and Mailed