

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

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

TARA A BLANCHARD
Claimant

APPEAL NO: 13A-UI-07414-DWT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

**OC: 05/05/13
Claimant: Appellant (1)**

871 IAC 24.2(8) – Claimed Dependents
Iowa Code § 96.6(2) – Timeliness of Appeal

PROCEDURAL STATEMENT OF THE CASE:

The claimant appealed a representative's May 23, 2013 determination (reference 02) that changed the number of dependents on her claim from one to zero. The claimant participated at the scheduled hearing. Based on the evidence, the claimant's arguments, and the law, the administrative law judge denies the claimant request to claim one dependent on her unemployment insurance claim.

ISSUES:

Did the claimant file a timely appeal?

Can the claimant claim one or zero dependents on the claim she established the week of May 5, 2013?

FINDINGS OF FACT:

The claimant established a claim for benefits during the week of May 5, 2013. She claimed her minor son as a dependent. When the claimant established her claim, he husband was also receiving benefits based on a claim he established the week of October 30, 2011. He claimed their minor son on his claim. The claimant's husband exhausted his benefits the week ending June 8, 2013.

The Department learned the claimant's husband had claimed their son on his October 2011 claim and informed the claimant in a May 23, 2013 determination (reference 02) that her dependents had been changed from one to zero. The claimant received the May 23 determination in late May. The claimant did not notice on the determination that the determination was final unless an appeal was filed or postmarked on or before June 1, 2013.

The claimant sent an email to the Department's general email and asked that her claim show one dependent instead of zero. In early June, the claimant received a response and learned she needed to file a written appeal to change the number of dependents back to one. The claimant filed her appeal on June 21, 2013.

REASONING AND CONCLUSIONS OF LAW:

The law states that an unemployment insurance determination is final unless a party appeals the determination within ten days after the determination was mailed to the party's last known address. Iowa Code § 96.6(2). The Iowa Supreme Court has ruled that appeals must be filed within the time limit set by statute and the administrative law judge has no authority to review a determination if a timely appeal is not filed. *Franklin v. IDJS*, 277 N.W.2d 877, 881 (Iowa 1979); *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979). In this case, the appeal was filed after the June 3, 2013 deadline for appealing expired. Since June 1 was a Saturday, the deadline to appeal was automatically extended to Monday, June 3.

The next question is whether the claimant had a reasonable opportunity to file a timely appeal. *Hendren v. IESC*, 217 N.W.2d 255 (Iowa 1974); *Smith v. IESC*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant acknowledged she received the May 23 by late May. Therefore, she had a reasonable opportunity to file a timely appeal, but did not because she did not notice the June 1 deadline and did not understand the process.

The claimant's failure to file a timely appeal was not due to any Agency error or misinformation or delay or other action of the United States Postal Service, which under 871 IAC 24.35(2) would excuse the delay in filing an appeal. Even though the claimant may not have understood the process, she did not establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have any legal authority to make a decision on the merits of the appeal.

Even if the claimant had filed a timely appeal, she cannot claim one dependent as of May 5, 2013, because her husband on an earlier claim that he was still receiving benefits from had already claimed the same dependent.

The law does not allow the same dependent to be claimed on two separate claims. 871 IAC 24.2(8). Since the claimant claimed her minor son as a dependent when she established her claim the week of May 5, 2013, when the Department learned the claimant's husband who was still receiving benefits on a claim he established the week of October 30, 2011, had also claimed their son as a dependent, the Department had to change the number of the dependents on the claimant's claim from one to zero. 871 IAC 24.9(1)b.

DECISION:

The representative's May 23, 2013 determination (reference 02) is affirmed. The claimant did not file a timely appeal or establish a legal excuse for filing a late appeal. Therefore, the Appeals Section does not have jurisdiction to address the merits of the claimant's appeal. The number of dependents on the claimant's May 5, 2013 claim remains at zero.

Debra L. Wise
Administrative Law Judge

Decision Dated and Mailed

dlw/css