

IOWA WORKFORCE DEVELOPMENT
Unemployment Insurance Appeals Section
1000 East Grand—Des Moines, Iowa 50319
DECISION OF THE ADMINISTRATIVE LAW JUDGE
68-0157 (7-97) – 3091078 - EI

DONALD A MATTHESS
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IOWA WORKFORCE
DEVELOPMENT DEPARTMENT

Appeal Number: 04A-UI-00216-DT
OC: 06/01/03 R: 03
Claimant: Appellant (1)

This Decision Shall Become Final, unless within fifteen (15) days from the date below, 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 the **Employment Appeal Board, 4th Floor—Lucas Building, Des Moines, Iowa 50319.**

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.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. 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.

(Administrative Law Judge)

(Decision Dated & Mailed)

Section 96.6-2 – Timeliness of Appeal – Monetary Determination
871 IAC 24.2(1) – Number of Dependents

STATEMENT OF THE CASE:

Donald A. Mattheass (claimant) appealed a representative's decision issued on December 12, 2003 (reference 05) that concluded that the claimant's appeal of a monetary determination that indicated the claimant had two dependents was denied because it was not timely. A hearing notice was mailed to the claimant's last-known address of record for a telephone hearing to be held on January 29, 2004. The claimant participated in the hearing. During the hearing, Agency Exhibits One through Four were entered into evidence. Based on the evidence, the arguments of the claimant, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

FINDINGS OF FACT:

The claimant established a claim for unemployment insurance benefits effective June 1, 2003. The claimant input an on-line claim on June 6, 2003 that generated a monetary determination showing the claimant's benefits would be based upon his claim of two dependents. This monetary determination was mailed to the claimant's last known address of record on June 7, 2003. The instructions on the determination contained a warning that an appeal must be postmarked or received by the Appeals Section within ten days of the date of mailing of the determination. The appeal requesting an increase in dependents was not filed until the claimant went into the local Agency office and signed a request on December 8, 2003. He believed that since he had not had an opportunity to attend an Agency class to assist claimants in the filing of claims that he had been deprived of the opportunity to properly complete a claim and claim four dependents, which might have slightly increased his weekly benefit amount.

The claimant has claimed two dependents, one of his sons and his daughter, on his income tax returns since the children's births in 1988 and 1997. Those two children do not reside with the claimant, but he does pay child support for those children. Two other children, one of which is the claimant's other son and one who is not biologically or legally the claimant's child, do reside with the claimant. The claimant has not claimed those children on his income tax returns in the past; rather, they have been claimed on the income tax returns filed by their mother, Mary Knox, with whom the claimant resides but to whom the claimant is not married. Ms. Knox does have 2003 income and presumably will be filing an income tax return for 2003. Further, while she has not received unemployment insurance benefits, she did establish a claim for unemployment insurance benefits effective May 18, 2003, expiring on May 16, 2004. On her unemployment insurance claim, Ms. Knox claimed two dependents, her son and daughter who reside with herself and the claimant.

REASONING AND CONCLUSIONS OF LAW:

The preliminary issue in this case is whether the claimant timely appealed the monetary determination.

Unless the claimant or other interested party files an appeal from an Agency representative's monetary determination or decision within ten calendar days after the representative's monetary determination or decision is mailed to the party's last-known address, the determination or decision is final. Benefits shall then be paid or denied in accordance with the representative's determination or decision. Iowa Code Section 96.6-2.

The ten calendar days for appeal begins running on the mailing date. The date indicated on the determination 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 871 IAC 26.2(96)(1) and 871 IAC 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 terminations 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). There is no showing in the record that the appellant did not have a reasonable opportunity to file a timely appeal.

871 IAC 24.35(2) provides in pertinent part:

The submission of any payment, appeal, application, request, notice, objection, petition, report or other information or document not within the specified statutory or regulatory period shall be considered timely if it is established to the satisfaction of the department that the delay in submission was due to department error or misinformation or to delay or other action of the United States postal service or its successor.

Training or orientation classes that the Agency offers to prospective claimants to assist them in filing their claims are not mandatory. The fact that the claimant did not have an opportunity to attend one of the classes does not excuse his failure to contest the two dependents noted on his June 6 monetary determination within ten days after it was mailed on June 7, 2003. The administrative law judge concludes that failure to file a timely appeal within the time prescribed by the Iowa Employment Security Law was not due to any Agency error or misinformation or delay or other action of the United States Postal Service pursuant to 871 IAC 24.35(2). The administrative law judge further concludes that the appeal was not timely filed pursuant to Iowa Code Section 96.6-2, and the administrative law judge lacks jurisdiction to make a determination with respect to the nature of the appeal, regardless of whether the merits of the appeal would be valid. See, Beardslee v. IDJS, 276 N.W.2d 373 (Iowa 1979); Franklin v. IDJS, 277 N.W.2d 877 (Iowa 1979), and Pepsi-Cola Bottling Company v. Employment Appeal Board, 465 N.W.2d 674 (Iowa App. 1990).

However, in the alternative, even if the appeal were to be deemed timely, the administrative law judge would affirm the representative's decision on the merits.

871 IAC 24.2-1-b-8 provides in pertinent part:

A "dependent" means an individual who has been or could have been claimed for the preceding tax year on the claimant's income tax return or will be claimed for the current income tax year. The same dependent shall not be claimed on two separate eligible concurrent established benefit years.

Given that Ms. Knox will likely file a 2003 income tax return that would list the two children living with the claimant and Ms. Knox as dependents, the claimant could not also list them as dependents. Further, irrespective as to whether the claimant becomes able to list the two custodial children on his 2003 return, Ms. Knox has already claimed those children as dependents on her current benefit year. Therefore, for the current benefit year, the claimant can only claim the two non-custodial dependents and not the two custodial dependents.

DECISION:

The representative's decision issued December 12, 2003 (reference 05) is affirmed. The monetary determination mailed June 7, 2003 indicating two dependents has become final pursuant to Iowa Code Section 96.6-2 and is correct.

ld/b