

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

ANDREW LUSSON
Claimant

**IOWA WORKFORCE
DEVELOPMENT DEPARTMENT**

APPEAL 16A-UI-05353-JCT

**ADMINISTRATIVE LAW JUDGE
DECISION**

**OC: 04/17/16
Claimant: Appellant (1)**

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

STATEMENT OF THE CASE:

The claimant filed a timely appeal from the May 4, 2016, (reference 01) decision that denied the request to add a dependent to the claim for benefits. After due notice was issued, a hearing was held on May 24, 2016. The claimant participated personally. The administrative law judge took official notice of the administrative record, including fact-finding documents. Department Exhibits One and Two were admitted into evidence. Based on the evidence, the argument presented, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the claimant make a timely request to change the number of dependents?

Can the claimant's request to add one or more dependents to the claim be granted?

FINDINGS OF FACT:

Having reviewed all of the evidence in the record, the administrative law judge finds: The claimant filed a claim for benefits on April 17, 2016, and attempted to list his three children as dependents. The claimant believed he had provided the correct information based on the questions asked. A monetary record was then mailed to the claimant's last-known address of record on April 20, 2016. The claimant received the record which indicated he had zero dependents. The claimant did not realize that his request for dependents had not been successfully submitted and was confused because he saw "dependents" and believed it was referencing dependents for tax deduction purposes. The claimant did not attempt to contact IWD for guidance until May 4, 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, which was May 1, 2016. Because May 1, 2016 was a Sunday, the final day to appeal was extended to Monday, May 2, 2016. The appeal was not filed until May 4, 2016, (Department Exhibit D-1) which is after the expiration of the ten-day appeal period.

REASONING AND CONCLUSIONS OF LAW:

Iowa Code § 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 § 96.4. The employer has the burden of proving that the claimant is disqualified for benefits pursuant to § 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 § 96.5, subsection 10, and has the burden of proving that a voluntary quit pursuant to § 96.5, subsection 1, was for good cause attributable to the employer and that the claimant is not disqualified for benefits in cases involving § 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 § 96.8, subsection 5.

Iowa Code § 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 § 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.

Iowa Code § 96.3-4 contains a formula for determining the claimant's weekly benefit amount that increases with the number of dependents. To change the number of dependents, a claimant must appeal the monetary decision that sets forth the claimant's weekly benefit amount within ten days after it was mailed to the claimant's last known mailing address. Iowa Code § 96.6-2.

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 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. 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). The record shows that the appellant did have a reasonable opportunity to file a timely appeal. In this case, the claimant delayed filing his appeal to the monetary determination because he was confused, thinking that the reference to dependents was with respect to tax deductions. The administrative law judge is sympathetic to the stress or confusion that may be associated with the unemployment process, but the claimant did not attempt to contact IWD for guidance until after the ten-day period expired.

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 § 96.6(2), and the administrative law judge lacks jurisdiction to

make a determination with respect to the nature of the appeal. See *Beardslee v. IDJS*, 276 N.W.2d 373 (Iowa 1979) and *Franklin v. IDJS*, 277 N.W.2d 877 (Iowa 1979). Therefore, the claimant's monetary eligibility should be calculated based on zero dependents.

DECISION:

The May 4, 2016, (reference 01) decision is affirmed. The claimant did not file a timely request to change the number of dependents, and therefore the claimant's request to add three dependents is denied. The claimant's monetary eligibility should be calculated based on zero dependents.

Jennifer L. Beckman
Administrative Law Judge

Decision Dated and Mailed

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