

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS BUREAU**

**DEBRA S HALFPOP**  
Claimant

**IOWA WORKFORCE  
DEVELOPMENT DEPARTMENT**

**APPEAL 17A-UI-01329-DB-T**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**OC: 12/25/16  
Claimant: Appellant (1)**

Iowa Code § 96.6(2) - Timeliness of Appeal  
Iowa Code § 96.6(1) – Filing Claims  
Iowa Admin. Code r. 871-24.2(1)g – Retroactive Benefits

**STATEMENT OF THE CASE:**

The claimant/appellant filed an appeal from the January 24, 2017 (reference 02) unemployment insurance decision that denied claimant's request for retroactive benefits. The claimant was properly notified of the hearing. A telephone hearing was held on February 27, 2017. The claimant, Debra S. Halfpop, participated personally. The administrative law judge took administrative notice of the claimant's unemployment insurance benefits records including the fact-finding documents.

**ISSUE:**

Is the claimant's appeal is timely?  
Should the claimant's request for retroactive benefits be granted for the one-week period ending December 31, 2016?

**FINDINGS OF FACT:**

Having reviewed all of the evidence in the record, the administrative law judge finds: The facts in this matter are undisputed. A decision denying claimant's request for retroactive unemployment insurance benefits was mailed to claimant's last known address of record on January 24, 2017. The claimant received the decision on Friday, February 3, 2017. The decision contained a warning that an appeal must be postmarked or received by the Appeals Section by Friday, February 3, 2017. The appeal was filed online on Saturday, February 4, 2017 at 12:10 a.m. Claimant received her mail on Friday, February 3, 2017 but did not read that she needed to file an appeal until she was 10 minutes late in filing the appeal. Claimant had less than 24 hours from receiving the notice and being able to timely file the appeal.

**REASONING AND CONCLUSIONS OF LAW:**

For the reasons that follow, the administrative law judge concludes employer's appeal is timely.

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.

The ten calendar days for appeal begins running on the mailing date. The "decision date" found in the upper right-hand portion of the representative's decision, unless otherwise corrected immediately below that entry, is presumptive evidence of the date of mailing. *Gaskins v. Unempl. Comp. Bd. of Rev.*, 429 A.2d 138 (Pa. Comm. 1981); *Johnson v. Bd. of Adjustment*, 239 N.W.2d 873, 92 A.L.R.3d 304 (Iowa 1976). The appeal in this case was filed online at 12:10 a.m. on Saturday, February 4, 2017.

The Iowa Supreme Court has declared that there is a mandatory duty to file appeals from representatives' decisions 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. Iowa Dep't of Job Serv.*, 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. Iowa Dep't of Job Serv.*, 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. Iowa Emp't Sec. Comm'n*, 217 N.W.2d 255 (Iowa 1974); *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant did not have a reasonable opportunity to file an appeal because the notice was received the same day it was due. Without timely notice, no meaningful opportunity for appeal exists. *Smith v. Iowa Emp't Sec. Comm'n*, 212 N.W.2d 471, 472 (Iowa 1973). The claimant filed the appeal within 24 hours of her receiving it in the mail. Therefore, the appeal shall be accepted as timely.

The next issue involves whether or not the claimant should be eligible for retroactive benefits for the one-week period ending December 31, 2016. Claimant did not file her weekly claim for benefits because she did not know there was a two-step process (opening the claim and filing

weekly claim for benefits). She inquired into non-payment of benefits approximately three weeks after noticing she did not receive payment.

Iowa Code § 96.6(1) provides:

1. Filing. Claims for benefits shall be made in accordance with such regulations as the department may prescribe.

Iowa Admin. Code r. 871-24.2(1)g provides:

Procedures for workers desiring to file a claim for benefits for unemployment insurance.

(1) § 96.6 of the employment security law of Iowa states that claims for benefits shall be made in accordance with such rules as the department prescribes. The department of workforce development accordingly prescribes:

g. No continued claim for benefits shall be allowed until the individual claiming benefits has completed a voice response continued claim or claimed benefits as otherwise directed by the department. The weekly voice response continued claim shall be transmitted not earlier than noon of the Saturday of the weekly reporting period and, unless reasonable cause can be shown for the delay, not later than close of business on the Friday following the weekly reporting period.

In order to be eligible for weekly benefits, the claimant must file an online web application continued claim or show good cause for the failure to do so to support a request for retroactive benefits. Iowa Admin. Code r. 871-24.2(1)g. Claimant must also be able to and available for work during the time she is claiming benefits.

Iowa Code section 96.4(3) provides:

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

3. The individual is able to work, is available for work, and is earnestly and actively seeking work. This subsection is waived if the individual is deemed partially unemployed, while employed at the individual's regular job, as defined in section 96.19, subsection 38, paragraph "b", unnumbered paragraph (1), or temporarily unemployed as defined in section 96.19, subsection 38, paragraph "c". The work search requirements of this subsection and the disqualification requirement for failure to apply for, or to accept suitable work of section 96.5, subsection 3 are waived if the individual is not disqualified for benefits under section 96.5, subsection 1, paragraph "h".

Iowa Admin. Code r. 871-24.1(113)a provides:

Separations. All terminations of employment, generally classifiable as layoffs, quits, discharges, or other separations.

a. Layoffs. A layoff is a suspension from pay status initiated by the employer without prejudice to the worker for such reasons as: lack of orders, model changeover, termination of seasonal or temporary employment, inventory-taking, introduction of laborsaving devices, plant breakdown, shortage of materials;

including temporarily furloughed employees and employees placed on unpaid vacations.

Iowa Admin. Code r. 871-24.23(25) provides:

Availability disqualifications. The following are reasons for a claimant being disqualified for being unavailable for work.

(25) If the claimant is out of town for personal reasons for the major portion of the workweek and is not in the labor market.

Claimant was not available for work the one-week period ending December 31, 2016 because she was out of the State of Iowa on vacation. Claimant is not eligible to receive retroactive benefits for the one-week period ending December 31, 2016 because she was not available for work for that period. Retroactive benefits are denied.

**DECISION:**

The January 24, 2017 (reference 02) decision is affirmed. The appeal in this case was timely but claimant was not available for work during the one-week period ending December 31, 2016. Retroactive benefits are denied.

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Dawn Boucher  
Administrative Law Judge

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Decision Dated and Mailed

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